21

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted], 1911

No. [redacted] 46

CROSS LAKE SHOOTING AND FISHING CLUB, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED MAY 6, 1909.

(21,652.)

(21,652)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 856.

CROSS LAKE SHOOTING AND FISHING CLUB, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1909.

a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 16631.

CROSS LAKE SHOOTING AND FISHING CLUB, Plaintiff in Error,
versus
STATE OF LOUISIANA, Defendant in Error.

Farrar, Jonas, Kruttschnitt & Goldberg and Alexander & Wilkinson, for plaintiff in error.

Walter Guion, Attorney General; J. M. Foster, E. W. Sutherlin, and W. P. Hall, for defendant in error.

Writ of error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the sixth day of April, A. D. 1909.

TRANSCRIPT OF RECORD.

1 *Petition.*

To the Honorable First Judicial District Court of the State of Louisiana in and for the Parish of Caddo:

The petition of the State of Louisiana, appearing and represented herein through and upon the information of Walter Guinon, her Attorney General, respectfully represents that your petitioner is the owner, having and possessing absolute title to the same, of the following described property, towit:—

The South half of the South half of Section twenty-eight, and all of that portion of the South half of Section 29 which is included in the traverse line of Cross Lake, all of Township eighteen North Range Fourteen West, and also the following sections and parts of Sections which are included in the traverse line of Cross Lake, to-wit: Sections 30, 31, 32 and 33 in Township Eighteen North, Range Fourteen West; Sections 4, 5, 6, 7, and 9 in Township Seventeen North, Range Fourteen West; Sections 13, 14, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 in Township Eighteen North, Range fifteen West; Sections 1, 2, 3, 4, 5, and 6 in Township Seventeen North, Range fifteen West; being all of the lands belonging to or claimed by petitioner west of the line dividing Sections 33 and 34 in Township eighteen Range fourteen and East of the line dividing ranges 15 and 16 and embraced in Cross Lake as shown by traverse lines thereof, all situated in the Parish of Caddo, State of Louisiana and aggregating eleven thousand (11,000) acres of land, more or less.

That by an act of the General Assembly of the State of Louis-

iana, approved July 6th 1892, being act No. 74 of the Session act of that year, the Caddo Levee District was created, and the control, management and administration of the affairs of the same was vested in and given to a Board of Commissioners known as the Board of Commissioners of the Caddo Levee District, whose duty it was made by Section 2 of said Act, to manage, control and administer the affairs of said District in accordance with the provisions of that act and the laws of said State.

That by Section 9 of said act, in order to provide the means to carry out the purposes thereof, and to furnish to said Board the necessary resources to enable it to assist in developing, establishing and completing the levee system in said district, your petitioner
2 granted, gave, bargained, donated, and conveyed unto said Board of Commissioners all public lands embraced within the limits of said Caddo Levee District, which then belonged to or which thereafter might belong to your petitioner, by reason of the same having been originally granted to your petitioner by the Congress of the United States or which had been, or might thereafter be, forfeited, or bought in by or for, or sold to petitioner at tax sale for non-payment of taxes; it being provided in said Section of the aforesaid act, that no such title would pass from the State of Louisiana, your petitioner, to the said Board of Commissioners and said Caddo Levee District, as would permit or warrant them, or either of them, in the discharge of their duties as an agent of petitioner, in disposing of such lands, so intended to be conveyed, in and by said act No. 74 of 1892, until the Auditor of the State and the Register of the State Land Office on behalf of and in the name of petitioner, had conveyed to said Board of Levee Commissioners the lands so granted or intended to be granted and conveyed, by proper instruments of conveyance, and that, until such conveyances had been made by proper instruments or deeds of conveyance, executed by said Auditor and Register, acting for and in the name and behalf of petitioner, and the same had been properly recorded in the Recorder's office of the Parish in which such lands might be located, no authority would be or was vested in or given to said Caddo Levee District or to the Board of Commissioners of the Caddo Levee District, to sell, mortgage, pledge or otherwise dispose of said lands.

That the aforesaid lands, although the property of your petitioner, are not and have never been such lands as, by section No. 9 of act No. 74 of 1892, it was provided should be granted, given, conveyed and delivered by your petitioner to said Caddo Levee District or to the Board of Commissioners of said District, for the reason that said lands are the bed of a once navigable lake, known as Cross Lake, which has become dry by reason of the recession therefrom of the waters which formerly covered the same, and that the same are lands which belong to your petitioner by virtue of her sovereignty and are such as came to her as a sovereign State on her admission into the Union, and are not lands belonging to
3 your petitioner which were originally granted to her by the Congress of the United States, or such as had been forfeited, or bought in by or for or sold to petitioner at tax sale for non-payment of taxes.

That notwithstanding the fact that none of said aforedescribed or classification *or* in the class of lands referred to and intended to be conveyed by petitioner to the Caddo Levee District and the Board of Commissioners of said District, in and by the terms and provisions of Section 9 of act No. 74 of 1892, the same not being lands which were originally granted by the Congress of the United States to petitioner, nor lands which had been forfeited, or bought in by or for, or sold to petitioner at tax sale for the non-payment of taxes, and notwithstanding the fact that, even if said lands had been, and belonged to, that class of lands designated and described in section 9 of said act No. 74 of 1892 as intended to be conveyed by petitioner to said Board of Commissioners and said Levee District, which, however, is denied, since the same had never, at any time, been conveyed by the Auditor and the Register of the State Land Office to said Board of Levee Commissioners by any instrument of conveyance on behalf, and in the name, of petitioner, and no such conveyance of same had ever been recorded in the office of the Recorder of the Parish of Caddo in which Parish said lands are located so as to give power and authority to the said Board of Levee Commissioners to sell or otherwise dispose of said lands or any part thereof, said Board of Levee Commissioners did, illegally and without power, or authority by notarial act passed before F. A. Leonard, Clerk and *ex-officio* Recorder and Notary Public for the Parish of Caddo, on the 20th of August 1895, undertake to convey said lands to W. B. Jacobs, A. F. Jenkins, W. S. Penick Jr., and S. J. Enders, for the price and sum of eleven hundred dollars declared in said act to have been paid cash, although, in point of fact, and the truth is, that no part of said amount was ever paid by them to said Levee Board or to the Commissioners of said Board and said sale was therefore never perfected.

That thereafter, to-wit: on the 28th August, 1895, by a public act passed before C. D. Hicks, a notary public, said W. B.
4 Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders undertook and attempted to convey all of said lands to the Shreveport Gun Club, and that by an act subsequently passed before said F. A. Leonard, Clerk of Court of the Parish of Caddo, on the 19th September 1895, said Caddo Levee Board did undertake and attempt to ratify and confirm the attempted conveyance of said property by said Jacobs, Jenkins, Penick and Enders, to said Shreveport Gun Club sought to be made by and through the aforesaid act of 28th August, 1895.

That thereafter, it was ascertained that said Shreveport Gun Club was not really a corporation organized according to the laws of the State of Louisiana, and especially for the reason that the number of its incorporators was only six when, by the laws of the State of Louisiana, such a corporation could not be organized by less that twenty-five persons, and that, therefore, said Shreveport Gun Club, by act passed before Lewis E. Carter, a notary public, on the 18th December, 1896, undertook to convey all of the aforedescribed property to the Cross Lake Shooting and Fishing Club, a corporation created and organized under the laws of the State of Louisiana, having its domicile at Shreveport in the said Parish of Caddo, and that all

of persons interested as stockholders in said alleged corporation, known under the name of the Shreveport Gun Club, joined in said attempted transfer and conveyance of said lands to said Cross Lake Shooting and Fishing Club now claims to be the owner of all of said lands.

That the said Shreveport Gun Club, and the Cross Lake Shooting and Fishing Club at the time of the pretended purchases of said property were composed mainly of the original purchasers, and they all subsequent purchasers, purchased in bad faith and with knowledge of the defects and nullities in said original pretended act of sale.

Now petitioner avers that none of said acts of sale aforesaid conveyed any title in or to the aforedescribed lands to any of the aforenamed persons to whom it was attempted to convey the title of petitioner therein, and that the Cross Lake Shooting and Fishing Club is absolutely without title or legal claim of ownership to the same for the reason, as herebefore alleged, that the Board of Commissioners of the Caddo Levee District, and none of those claiming to hold from and through said Board, had any authority, power or right to convey or dispose of the title of petitioner in said lands, and for that reason, as well as for all of the other reasons already alleged and given, your petitioner's title to and in said lands has never been conveyed or divested.

Now petitioner avers in the alternative that if said Board of Commissioners of the Caddo Levee District had and possessed the legal right to sell or otherwise convey to W. B. Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders the lands sought to be conveyed to them in through and by the notarial act aforesaid, passed on the 20th August 1895 before F. A. Leonard, Clerk of Court and *ex-officio* Recorder and Notary Public for the Parish of Caddo, which, however is denied, nevertheless said act would not have conveyed and did not convey to them, or to either of them, any title of petitioner in or to said lands, for the reason that said pretended sale or conveyance of said lands was a mere disguised donation of said lands by said Board to said Jacobs, Jenkins, Penick and Enders, which said Board of Commissioners, which had and possessed only a limited authority and power in respect to the disposing of the lands belonging to petitioner in said Caddo Levee District in the discharge of its duty as a governmental agency of the State of Louisiana, had no power or authority to make, and in support of the allegation that said pretended conveyance or sale of 20th August, 1895, was a disguised donation of said lands, petitioner avers that at the date said lands were fully worth the sum of not less than two dollars per acre, although sought to be disposed of by said Board to said Jacobs, Jenkins, Penick and Enders at the rate of ten cents per acre.

Petitioner avers further, in the alternative, that if said Board of Commissioners should be held to have the legal right, power authority to make a conveyance of said lands at the time of the aforesaid act of 20th August, 1895, and that said pretended conveyance of said lands was not really and in effect a disguised donation of the same by said Board to said Jacobs, Jenkins, Penick and Enders, but was really intended as a sale of same to them, then and in that

event petitioner avers that the said act of sale is now and was at that time absolutely null and void for lesion beyond moiety, as the amount stated in said act of sale as the price paid for said
6 property by said Jacobs, Jenkins, Penick and Enders was at the time and is now far below one half of the real and just value of said property said property being now fully worth the sum of Eighty Thousand dollars.

The premises considered, petitioner prays that said Cross Lake Shooting and Fishing Club be duly served with a copy of this petition and cited according to law and that, after, due and legal delays, judgment be rendered herein recognizing and decreeing that the Board of Commissioners of the Caddo Levee District did not convey to W. B. Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders, the lands described in the notarial act of 20th August, 1895, passed before F. A. Leonard, Clerk of Court and *ex officio* Recorder and Notary Public as aforesaid for want of authority to dispose of the same at that time, as well as for the non-payment of price as already alleged, and further decreeing and adjudging the conveyance of said lands sought to be made in, through and by said act as well as in, through and by all subsequent acts and deeds wherein it was sought to convey the title of petitioner in and to said lands to be absolutely null and void, and further decreeing and adjudging your petitioner to be the sole owner, with perfect and absolute title to the same.

Petitioner avers, however, that in the event this Honorable Court should hold that said Board of Commissioners had and possessed the legal right to convey and transfer said lands to said Jacobs, Jenkins Penick and Enders, then and — that event petitioner prays that said notarial act of 20th August, 1895, be decreed and adjudged not to be a sale of said lands by said Board to said Jacobs Jenkins, Penick, and Enders, but that it be held and adjudged to be a disguised donation of said lands to them and that, for said reason, the same be set aside and annulled.

Petitioner further prays, in the alternative, that in the event this Honorable Court should hold and find that the act of 20th August 1895, was not a donation in disguise but that it was a reality, a conveyance to said Jacobs, Jenkins, Penick and Enders by said Board of Commissioners of the lands therein described, then and in that event petitioner prays that the conveyance sought to be made in and by the same be, nevertheless, set aside and annulled for lesion, for the reason already more fully and specifically set forth
7 herein.

And for all and general relief and costs.

WALTER GUION,
Attorney General.
J. M. FOSTER,
Dist. Attorney, 1st Judicial Dist.
E. W. SUTHERLIN,
W. P. HALL,
Counsel.

Filed March 28th, 1906.
F. A. LEONARD, *Clerk.*

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Exception.

In this case now comes the defendant and without answering to the merits of plaintiff's demands, but reserving the right to do so if this exception be overruled and excepts to the demands of the said plaintiff and for no cause of exception says:

That the demands of the said plaintiff are inconsistent and contradictory, and the said plaintiff has improperly cumulated herein contradictory and inconsistent demands, exclusive of each other, in that the said plaintiff claims that the Commissioners of the Caddo Levee District were without right to dispose of the lands herein, and then seeks to have the said sale set aside on account of lesion and on account of an alleged donation in disguise and for other causes, which if they exist at all can not be urged by the said plaintiff, and are contradictory of the other demands in said petition set forth.

Wherefore defendant prays that the said suit be hence dismissed or the said plaintiff be required to elect on which of its said demands it elects to proceed, not contradictory of each other,
8 and for cost and general relief.

ALEXANDER & WILKINSON,
Attorneys for Defendant.

Filed April 4/1906.
J. H. LEVY, *Dy. Clk.*

District Court.

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Exception.

In this case now comes defendant and without waiving or abandoning its exception heretofore filed, but specially reserving the same excepts further to plaintiff's petition and says that said petition sets forth no cause of action and discloses no right or grounds for the relief therein sought.

Wherefore it prays that this exception be sustained and plaintiff's suit be hence dismissed and for costs and general relief.

ALEXANDER & WILKINSON, *Attorneys.*

Filed Apr. 11/1906.
F. A. LEONARD, *Clk.*

District Court of Caddo Parish, Louisiana.

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Exception.

In this case now comes defendant and without waiving or abandoning its exceptions and pleas heretofore filed in this case for further exceptions pleads in bar plaintiff rights to recover the exception of *res adjudicata,* and shows that in the suit of Shreveport Rod & Gun Club *et al. vs.* Board of Commissioners Caddo Levee District *et al.* No. 12,170 on the docket of the Supreme Court
9 of the State and reported in 48 La. Ann 1081, and wherein the said Commissioners of the Caddo Levee District were intervenors, representing the interest of the public and of the said plaintiff herein, the identical lands as here sued for were in contset, and were claimed by said Board of Commissioners of the Caddo Levee District on behalf of the public, as well as on behalf of the State with full and general legal authority to do so, from W. B. Jacobs, S. J. Enders, A. F. Jenkins and W. S. Penick, your defendant's vendors, and the demands so made in said suit were finally adjudicated by the said Supreme Court of the State of Louisiana, wherein said court finally and fully sustained the title of your defendant's warrantors and vendors to the said lands, and wherein the matters and things now set up by said plaintiff were fully and finally adjudged by said court in favor of your defendant's vendors, the said Jacobs, *et als.,* and which said judgment and decree is and was binding on the said plaintiff here and is final and conclusive of the issues here presented and which said final judgment your defendant pleads as *res adjudicata* and as an estopple against the said plaintiff as to the matters and things herein asserted by it, and which said final judgment and decree can not be inquired into or altered by said plaintiff and which is binding on it.

Wherefore it prays that this exception be sustained and plaintiffs suit be hence dismissed at its cost and for general relief.

ALEXAMDER & WILKINSON,
Attorneys.

Filed Feb'y 20th, 1907.
J. H. LEVY, *Dy. Cl'k.*

1st District Court of Caddo Parish, Louisiana.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Answer.

10 In this case now comes defendant and without abandoning or waiving its exceptions and pleas heretofore filed by it, but specially urging same as a part of this answer, for answer to plaintiff's demands denies generally and specially each and every allegation in its petition contained, except such as it admits herein.

It admits that it is in possession of the land in question under chain of title as set up by the plaintiff, but it specially denies that its said title is null or void for any reason, or that the plaintiff has any interest or right to contest its said title in the manner and form as herein set up.

It specially denies that said state has any right title or interest in said property and avers that said state by act 74 of 1892 and the amendatory act thereto specially transferred said land to the Commissioners of the Caddo Levee District, which became the sole owner thereof and entitled to sell the same, since which time the said state ceased to be the owner of said lands.

It specially denies that the lands in question were once the bed of a navigable lake, but on the contrary avers that same were swamp and overflowed lands, inuring to the state as such, and by it transfered to the said Caddo Levee Board by said acts, without the necessity of any deeds of conveyance from the Register of the State Land office or the Auditor of the State.

It specially denies that there was any lesion in the sale to W. B. Jacobs *et als.* and avers that the price paid at that time was ample and sufficient, but in any event the right to contest such sale for said reason has long since prescribed and become barred by the prescription of four years which your defendant specially pleads in bar of plaintiff's rights.

It specially denies that said sale was a donation in disguise, or that the purchase price was not paid, and avers that same was a sale made and accepted in good faith in the year 1895, since which time your defendant has been in the actual possession of said land, paying the taxes to said plaintiff, and it pleads the prescription of five and ten years in bar of plaintiff's right to set aside said sale now for any cause.

11 It further avers that with the knowledge and consent of said state the said Caddo Levee Board before any so-called deeds of conveyances were executed by the Register or Auditor took possession of all of the swamp and overflowed lands as well as all other lands of the state in said district and proceeded to sell the same

to actual purchasers and the said plaintiff made no protest or objection thereto, but acquiesced therein and specially ratified such sale by said board and is now estopped from contesting such sales so made by said Board of Commissioners which estopp*le* your defendants specially pleads.

That by the terms of said act 74 of 1892 and the amendatory act thereto, the said lands were given, granted, donated and delivered to said Caddo Levee Board, and acting on the faith of which the same was purchased by your defendants vendors W. B. Jacobs, *et als.*, and to permit the said State now to retake said lands would be in violation of its contract embraced in said acts and your defendants purchased relying thereon and the decisions of the Supreme Court of the State, thus impairing the obligation of its contract in violation of the Constitution of the United States and of the State of Louisiana.

Your defendant specially urges as a part of its answer the plea of *res adjudicata* hereto-re filed by it as if specially set out in full in this answer.

In the alternative defendants shows that it has paid the taxes to the said plaintiff on said lands since the year 1895, amounting to seven hundred fifty-one & 9/100 dollars, as per tax receipts attached and in the event of eviction therefrom should have judgment in reconvention for said sum against said plaintiff, with five per cent. interest on each payment from date of payment until paid with right to retain said property until paid.

Wherefore it prays that plaintiffs demands be rejected at its cost. But if evicted it prays for judgment against said plaintiff for the amount of said taxes and interest and for cost and general relief.

ALEXANDER & WILKINSON,
FARRARR, JONAS & KRUTTSCHNITT,
Attorneys.

12 Filed March 16/1907.
J. H. LEVY, *Dy. Clk.*

In the First District Court, Caddo Parish, La.

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Judgment on Exception.

This is a petitory action brought by the State to recover a large tract of land in Caddo Parish, Louisiana, designated as the bed of Cross Lake, a large and once navigable lake. Coupled with the petitory action are pleas in the alternative to set aside certain pretended sales as being null and void, a donation in disguise and for lesion beyond moiety.

Defendant filed an exception of no cause of action and a plea of *res adjudicata*. The facts are about as follows:

In 1892, the Legislature, by Act No. 74, created the Caddo Levee District, granting certain rights and powers therein. Its main purpose being to protect from overflow the alluvial land within said district, by Levees, dikes etc. and in order to provide means for carrying out said purposes, Sec. 9 of said Act declared that "All land now belonging, or that may hereafter belong to the State of Louisiana embraced within the limits of said District, shall be and the same are hereby granted given, bargained, donated, conveyed and delivered to said Board of Commissioners, whether the said lands or parts of land were originally granted by Congress of the United States to the State of Louisiana, or whether the said lands have been or may hereafter be, forfeited, or bought in by or for, or sold to the State at tax sale, for non-payment of taxes; when the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired; provided, how-
13 ever, any and all former owners of land which have been forfeited to or purchased, by, or sold to the State for non-payment of taxes may, at any time, within six months next ensuing after the passage of this act, redeem the said land, or all of them, upon paying to the Treasurer of the State all taxes, cost and penalties due thereon, down to the date of the said redemption, but such redemption shall be deemed and be taken to be sales of land by the State and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State to convey to the said Board of Levee Commissioners by proper instrument of conveyance, all lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time the said Auditor or Register of the State land office or either of them shall be requested to do so by the said Board of Levee Commissioners or by the President thereof, and thereafter the said President of the said Board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, and where the conveyances are so recorded, the titles to the said lands with the possession thereof shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees. The act goes further on to authorize "The said Board to sell all of said lands and place the proceeds in the State Treasury to the credit of the Caddo Levee District etc."

Acting under this authority the Board of Commissioners of the Caddo Levee District, in 1895, sold the lands in controversy to W. B. Jacobs, and others, who sold to defendants herein.

The objects of this suit is to recover this land for the State and Levee Board on the following grounds:

1st. That this land being the bed of a navigable lake, was not acquired either by donation from Congress or forfeiture of State taxes, but belonged to State by virtue of State Sovereignty. That

being State Sovereignty land the same was not given, granted and donated by Act 74 of 1892, inasmuch as the land donated by
14 said Act was designated as land donated by Congress under Acts 1849-1850 and lands forfeited to the State for non payment of taxes.

2nd. That if said land should be held to fall within the class of lands donated by Congress under Acts of 1849-1850, that no formal deed from the State, signed by the Register of the State Land office and the Auditor has ever been made to the Board of Commissioners of the Caddo Levee District as required by Act 74 of 1892, and that they had no right or authority to sell the same.

3rd. That if, in the alternative, they did have a right to sell the same that they had not in truth and fact sold the said land but that the sum recited to have been received in the pretended deed was never received by the Board of Commissioners, but that the pretended sale and transfer was a donation in disguise.

4th. That if, in the further alternative, the pretended sale was real, then that the sale was made for less than half its value and the sale should be set aside for lesion beyond moiety.

We shall take up each of these grounds as they are represented and see whether or not plaintiff has shown any cause of action and if so, if it is estopped by the plea of *res adjudicata*.

1st. Are the lands sued for such lands as was intended to be conveyed to the Levee District by Section 9 of Act 74 of 1892.

The allegations which must govern us, show that this land was the bed of a navigable lake from which the waters have receded.

Act 274 of 1855 declares the beds of all shallow lakes to be overflowed lands and within the statute of 1849-1850. The Supreme Court in McDade *vs.* Bossier Levee Board 109 La. 625 said "Permanently overflowed swamp, or so called shallow lakes, destined to become dry as the direct and necessary effect of building levees in aid of the construction of which the swamp land grants of 1849-1850, were made, passed as land under these grants. The Acts making the grants contemplated that these areas would be reclaimed, and therefore, within the purview of the acts they were land.

Under Act 247 of 1855 and the McDade case it might be questionable whether this land should be treated as overflowed land,
15 passing under the grant, or land belonging to the State by virtue of State Sovereignty; but, as under our construction of this case it is not necessary to now decide that question we pretermit thereon.

Admitting that the bed of this navigable lake was State Sovereignty land let us see if it must be treated in this case as falling in the same category as Congressional donation land? In deciding this we shall refer to the several acts of the Legislature.

If Act 74 of 1892 stood alone, there would be great force in the plaintiff's contention, that it was not included in said grant, but we find that by Acts No. — of 1900, all lands, including State Sovereignty lands, Congressional donations and tax forfeited lands were alike included in the amended act, and thereby all lands fell in the same category. It is true that when this land was sold by the Caddo

Levee Board to Jacobs *et al.*, it is contended that the Levee Board was not the owner and had no right to sell the same, but counsel for defendant contends that, although the Board may not have owned this land at the time of the sale to Jacobs, yet by the acts of 1900 it did become the owner and whatever title was vested in the Levee Board by act — of 1900, inured to the benefit of the Board's Vendees—Jacobs *et al.*

Counsel for plaintiff recognizes this fundamental principal of law, but contends that it is not applicable to a case where an agent sells without authority from his principal, but quotes us no authority. He contends that the power and authority of the Caddo Levee Board was that of a mere agency of the State. This, we admit is true still we cannot see why this fact would be an exception, especially where the Principal has received the price of said sale. It is upon this very principal that the subsequently acquired title enures to the benefit of a prior purchaser. It is upon this ground that no one can receive the price and at the same time repudiate the sale. There is another principle of law applicable, which is, that no man can enrich himself at the expense of another. It strikes us as good law and equity to hold that where one, whether it is a Levee Board or an individual, has sold a piece of property which it did not own, and received the price therefor, and then subsequently becomes the owner thereof by perfection of his title, that his ownership
16 and title should enure to the benefit of his vendee from whom he has already received a valid consideration, the Levee Board was an agent it was likewise a quasi-principal.

If the State itself has received the price and it has been applied to the very purpose for which it was granted and donated, it would seem bad faith to let the State retain the purchase price and at the same time declare the sale a nullity.

Counsel for State contends that the Legislature had a right to destroy a municipal corporation and take back all its powers into the body of the State, and by acts of 1902, revoke or repudiated the sale of this land. This we admit is true, and its right to do this is undoubted, unless the agent had already exercised its powers and the State has reaped the benefits of his acts. In such a case there would be vested rights which the Legislature could not destroy. Counsel contends that the State has not received the price. This may or may not be true, but in the deeds filed, its agent, the Levee Board has acknowledged to have received it, and this acknowledgment must stand until it is shown to be untrue.

We can conceive that if the Legislature had, in Act — of 1900, wherein it donated Sovereignty lands to the Levee Board, specially reserved this land to itself, then there would be great force in Counsel's contentions, but it did not do so, or attempt to do so for two years thereafter. It was then too late, for the Levee Board's unqualified title to this land was recognized by the Legislature, and its title enured, *eo instanti*, to Jacobs *et al.*, and could not two years later be taken from them.

We must hold therefore, that although in 1895 the Levee Board had no title to this land, that they did receive title in 1900, and

having already sold it, their subsequently acquired title inured to the benefit of this vendee.

This, then places this State Sovereignty land on the same footing (under the facts in the case) as the other land; and unless the second contention of Counsel for State is good it passed to their purchasers by Act of sale of 1895.

17 Granting this, Counsel for State contends that under act 74 of 1892 and act — of 1900, no title to this land could have passed from the Levee Board to defendants because no formal deed had been or has ever been passed from the State to the Levee Board, as required by Section 9 of said acts of 1892 and 1900. Counsel for defendant contends that the grant of all land under said acts, except such as has been forfeited to the State for the non-payment of taxes was a grant *in presenti*, and needed no formal deed from the register and Auditor. That the clause in Section 9 requiring this formal deed from these two officers applied only to such lands as were forfeited to the State for the nonpayment of the taxes. After a careful reading of Section 9 the Court is impressed with the force of his contention, for the Act, after stating what the lands were intended to be donated said: "Where the State has, or may hereafter become owner of lands by or through tax sales, conveyance thereof shall only be made to said Board of Commissioners after the period of redemption shall have expired," and after making other provisions pertaining strictly to tax lands it is further said: After the expiration of said six months (which must refer to tax lands) it shall be the duty of the Auditor and Register on behalf of and in the name of the State to convey all of the lands granted or intended to be granted and conveyed to said Board; whenever from time — time said Auditor or Register or either of them shall be requested to do so by said Board or its President, and when the said Conveyances are recorded, etc., the title will thenceforth vest absolutely, etc. Now if this had referred to land donated by Congress or State Sovereignty lands, it appears to the Court that something pertaining to how the transfer of these lands should be perfected. These lands had never been served from the public domain. No one was claiming them or had ever claimed them and what reason or cause could there be for waiting six months to have deeds to State Sovereignty or Congressional grant lands made?

These lands were donated *in globo;* they did not even have to be selected, designated or set apart, as any special class of; and, as wet and overflowed etc., but all lands owned by the State was given and granted and all the proof necessary to complete title would

18 be to show that the land was State land.

But let us see as to tax forfeited lands. These were lands which had at one time, been segregated from the Public Domain and entered into private ownership, and although they were forfeited to State by non-payment of taxes the private individual had a certain right to redeem these lands, and in order that there might be some data as to when his right began and when it ended, and in order to forever put at rest the contending claimants, the individual on one side and State on the other, we can easily see the necessity

of having such disputed titles finally and definitely settled by recorded deeds. But as to land which was clearly the land of the State and about which there could be no dispute, we must admit that we can see neither sense or reason why anything more than necessary Legislative grant should be necessary. In the Congressional grants of 1849-1850 certain classes of land were granted, to-wit: Wet and overflowed land and such as was not susceptible to cultivation without draining, etc. In such grant we could see that a classification and selection would be necessary. Yet the Supreme Court of the U. S. in Wright *vs.* Roseberry, 121 U. S., 488, held "That the grant was one *in presenti;* passing title to the land of the character therein described from its date, and requiring only identification thereof to render such title perfect." Under the Acts of 1849-1850 the land granted being of a certain class, required some identification, but in the case at bar, it is no particular class of land that has been granted by the State, but all its lands were granted.

Not only this, but if Counsel for State is correct in his contentions that the Levee Board is only an agent of the State, why should it be necessary for the State to make a formal deed to itself, of lands about which there can be no dispute of title? It seems to us that it is sufficient if the State in its own name, or through its quasi agent, the Levee Board, should make formal deeds to individual purchasers and that no deed further than the Legislative grant is necessary. This would not be true of tax forfeited lands, for about them there is often some dispute, and therefore the Legisla-
19 ture thought it necessary to fix a date within which this class of land, about which there was some dispute, should be settled, and in order to forever put it at rest and put a formal deed on record, special provisions for this particular class of lands were made.

After a careful reading of Sect. 9 of said act we can reach no other conclusion but that the formal deeds required by said Section refers only to tax forfeited lands. This being true the plea of *res adjudicata* would be good as to lesion, since that point has already been decided, and the question of no cause for action would have to be sustained, except as to the point on the question of absolute failure to pay any price whatever as alleged in plaintiff's petition.

Now, while the above are our views, and we felt it our duty to so express them, we must yield to the opinions of, our masters, the higher courts of the State. In the case of McDade *vs.* Bossier Levee-Board 109 La., and Hall *vs.* Levee Board, decided soon after, our Supreme Court held that the title did not vest in the Levee Board until formal deeds were made by the Auditor and State Register. This ruling, it struck us at the time, was influenced considerable by the peculiar conditions of affairs in these cases.

The plaintiff had had possession of these lands for quite a number of years and the Levee Board reconvened and sued for, rent for use of this land. The Court, feeling that the parties were in actual if not legal good faith, did not feel inclined to make them pay for back years and compromised by holding that the rights of the Levee Board to collect rents only dated from their formal deed.

But, whatever may have been their reason, they did so hold and we must yield to their opinion, notwithstanding in the case of Williams *vs.* White Castle Lumber Co., 114 La. 447, some time after the McDade and Hall cases were decided, the Court seemed to be in doubt about this point. The question in that case was this: The plaintiff had a patent or deed from the Levee Board, but the evidence did not show that the president was authorized to make the deed, nor was the deed recorded in the Parish where the land was
20 situated. Defendants claim by patent from the State and quit claim from Levee Board which had been duly recorded. The question arose as to good faith of defendant. The fact that a simple quit claim from Levee Board to defendant was an evidence of the fact that defendant knew that there was an outstanding title from the Levee Board. In passing upon this point the Court said: "The then condition of title, as between the State and the Levee Board, however, sufficiently explains why the conveyance was taken in the form mentioned. It was not known at the time, and it may be that it is not known, now, whether a perfect title to the land affected by Act No. 97 of 1890 (which is similar to act 74 of 1892) was conveyed to the Levee Board by the terms of that act, or whether something more was necessary for the accomplishment of that result." It looks like the Court did not look upon the McDade and Hall cases as *stare decisis*, or they would not have used the expression "and it may be that it is not known now whether a perfect title was conveyed to the Levee Board by the terms of the act, or whether something else was necessary." This case will force a direct and pointed decision of that question, and as we do not feel authorized to ignore these decisions, especially since there is a cause of action set forth in the plea of "donation in disguise," we must be governed by them.

For these reasons we overrule exception of no cause of action, and the plea of *res adjudicata* and let the whole of the matter go to upper Court for final hearing.

A. J. MURFF,
Dist. Judge.

Filed March 13, 1907.
J. H. LEVY, *Dy. Clk.*

A true copy.

---

21 In 1st Dist. Court, La.

No. 10432.

STATE OF LOUISIANA
vs.
THE CROSS LAKE HUNTING & FISHING CLUB.

Opinion and Judgment.

This is a suit by the State of Louisiana to recover a large tract of land in Caddo Parish, designated as the bed of Cross Lake. This

land was sold by the Board of Commissioners of the Caddo Levee District to W. B. Jacobs, and others in 1895, and by Jacobs and his co-purchasers to this defendant.

The facts in the case are about as follows:

In 1892, the State Legislature by act No. 74 its General Assembly, created the Caddo Levee District, granting it certain rights and powers with the view of protecting the lands within said District, from overflow and of reclaiming other lands therein by levees, dikes drainings, &c. In order to provide means for carrying out said purpose, the Legislature in the same act, declared that "All lands now belonging, or that may hereafter belong to the State of Louisiana, embraced within the limits of said district, shall and the same are hereby granted, bargained, donated, conveyed and delivered to said Board of Commissioners whether the said land or parts of land were originally granted by Congress of the United States to the State of Louisiana, or whether the said lands have been, or may hereafter be forfeited or bought in by or for, or sold to the State at tax sale for the non-payment of taxes, &c.," going on to say how land bought in for taxes shall become vested in the Levee Board, &c. Acting under this authority the Board of Commissioners was duly appointed and organized and entered upon the discharge of their duties as such. In 1895, several years after their organization, the Board of Commissioners by virtue of the authority vested in them under said Act, bargained, sold, and delivered unto W. B. Jacobs and others 11,000 acres of land in the bed of what is known as Cross Lake, a large lake situated within the said Levee District for the sum & Price of $1,100, cash as recited in the deed. Later W. B. Jacobs and his Co-purchasers sold said land to the present defendant, The Cross Lake Hunting and Fishing —. The object of this suit to have these sales declared a nullity on the following grounds:

22

1st. That this land, being the bed of a navigable lake, was not acquired by the State, either by donation from Congress of the U. S. or by forfeiture of State taxes, and was therefore not intended to have been granted by the State Legislature under act 74 of 1892.

2nd. That if said lands should be found to fall within the class of lands donated by Congress under the acts of 1849 & 1850, known as the swamp land Grant, that no formal deeds had ever been passed by Register of the State Land Office and Auditor to the Levee Board as required by Act 74 of 1892 and that the Levee Board had no title to said land and therefore no authority to dispose of the same.

3rd. That in the alternative if it should be found that they did have a right to sell this land they had not in truth and fact sold the same and that the sum pretended in the deed to have been received by the Levee Board, was never received, but that the pretended sale was a mere donation in disguise.

4th. That if the pretended sale was real then the sale was made for less than half its value and should be dissolved for lesion beyond moiety. The defendant first pleaded the exception of no cause of action, and *res adjudicata* which were overruled. Defendant then pleaded a general denial and estoppel.

Let us take up the Contentions of the plaintiff as they are pleaded and see if it is entitled to relief.

1st. Are the lands in controversy such as come to the State by vitrue of the Swamp Land Grants of 1849 & 1850, or did they come to the State by virtue of State Sovereignty? This question depends upon the fact whether these lands were the bed of a navigable lake at the date of the swamp land grant, or were they simply "Overflowed lands" under said acts; these lands have been the subject of several and various suits; and much of the evidence in this case was
23 taken in previous suits, and especially so upon the question of navigability; There is evidence in the record to show that years ago where there was a raft in the upper Red River the water came out of Red River through this lake, and that during certain seasons of the years small boats would navigate this lake and logs were floated down the same, but no great amount of navigation. In other words navigation depended upon the stage of the water at certain seasons of the year. To properly decide this question let us examine the declaration of our State Legislature in Act 247 of 1855, which follows soon after the Swamp land grant, the Legislature said "That the bed of all shallow lakes should be construed and declared to be overflowed lands within the Statutes of 1849 & 1850." Our Supreme Court in McDade *vs.* Bossier Levee Board 109 La. 625 said: "Permanently overflowed Swamp, or so called shallow lakes, destined to become dry as the direct & necessary effect of building levees in aid of the construction of which the swamp land grants were made, passed as lands under these grants."

We are not satisfied that Cross Lake was a navigable stream such as contemplated by the law—but as, in our opinion, it makes no material difference in the solution of this question, we will admit that it came to the State by virtue of the State sovereignty.

This conceded, was it granted by the State Legislature to the Levee Board, under act 74 of 1892, it may be inferred by specially mentioning Congressional Grant lands & Tax forfeited lands that State Sovereignty lands were not within the grant; but by referring to Act No. 160 of 1900, we find act No. 74 of 1892 amended so as to read as follows: "All lands now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District, as herein constituted shall be and the same are hereby granted, given, bargained, donated conveyed and delivered unto the said Board of Commissioners of the Caddo Levee District, &c.," leaving out any specification, as to the class of lands, but resting on the words "all lands now, or that may hereafter be owned by the State."

Evidently then the Act of 1900 intended to grant all lands
24 including State sovereignty lands as well as Congressional Grant and Tax forfeited lands. It is true that this amendment was made several years after the Levee Board had sold this land to Jacobs, and the plaintiff contends that as the Levee Board had no authority in 1895 to sell this State sovereignty; the subsequent granting of this land to the same grantee and authority to sell the same, would not inure to the benefit of the vendees of 1895.

The Supreme Court of the U. S. in the 157 U. S. page 57, said: "The enlargement of land grant made to the same grantee is not to be as an independent grant to a different party, but is in *pari materiæ* and to be construed accordingly."

It is an elementary principle of law that if one should sell a piece of property of which he is the owner, but subsequently acquired title, his subsequently acquired title will inure to the benefit of his vendee.

Counsel for plaintiff admits this, but says "this principle of law is not applicable to sales by an agent, and that the Levee Board was simply an agent of the State." He quotes us no authority nor does he suggest any good reason for his contentions. While we can concede that the Levee Board is a quasi-agent of the State government, we must recognize it also as a quasi-principal, in so far as it acts within the present authority vested in it by the Legislature. By act 160 of 1900, the State undoubtedly parted title with the land and the Levee Board became the owner with full & complete power to sell, dispose of and do as they see fit; so that it is granted since the State has parted with its title, what right has it to come in now and assert its ownership. It might have some standing to oppose its wrongful disposition, but where the Levee Board has sold it at a price which was in their discretion, and the proceeds received by them, we do not think the State, who has parted with its title has any standing to question the sale. "No one can enrich himself at the expense of another" is a recognized principal of law. The Levee Board sold land for a price within their discretion & received the price, and if the State is permitted to come in years after and contest these sales, unstable, indeed would be the title to thousand of acres of land all over the State. Just here let us see if the Levee Board received the price $1100! The notarial deed declared the receipt; the evidence shows that a check on the bank was given as the purchase price, and that the check would have been paid on presentation. That some time during the morning after the notarial transfer of this land by the Levee Board, some parties who were anxious for the land challenged the Levee Board for selling same, and the Levee Board for some reason did not present the check for payment. That Jacobs on their failure to present the check at the bank tendered them the cash which they declined at first to take but which it seems was later accepted & placed to the credit of the Levee Board in the first National Bank of Shreveport "to be paid on return of deposit-check and when the title to Cross Lake land sold by the Levee Board to W. B. Jacobs *et als.* shall be made perfect and cleared of any cloud." The price had been duly and truly paid by the purchasers, and because the Levee Board refuse- to have the check cashed and saw fit to place the price in the First National Bank till such time as they saw fit to withdraw it, was no fault of the purchasers and they cannot be held for the actions of the Board. They had done all the law required and the sale was as complete as they could make it, and because some outsider had persuaded the Levee Board not to accept payment of a check cannot be visited on the purchasers. Besides, they are bound by the recitals of the deed which is not shown by the evidence to have been made neither in

error or fraud, and therefore must estop the Levee Board & therefore the State, so especially in so far as defendant is concerned.

We must hold then that the Levee Board sold this land & received the price, and if they subsequently became the owner by Act 160 of 1900, their title must inure to the benefit of Jacobs *et als.* & to defendant.

Counsel for State contends that by Act No. — of 1902, this land was specially reserved from sale by the Legislature. This was two years after the grant of 1900, and whatever title the Board held from 1900 to 1902 had inured & vested in the Vendees of the Levee Board and could not be taken from them even by the Legislature.

26 The Supreme Court of the U. S., in 103 U. S. 26 L. 395, says: "The prohibition of the Constitution against the passing of laws impairing obligations applies to the Contracts of the State and those of its agents acting under its authority, as well as contracts between individuals, and that obligations impaired in the sense of the Constitution when the means by which a contract at the time of its execution could be enforced."

See State Constitution, &c. We must hold that whatever title to this land passed by acts of 1892 or 1900 to the Levee Board inured to the benefit of Jacobs *et al.* under the Levee Board's deed to them.

This then places the State Sovereignty land on the same footing as far as this case is concerned, with the Congressional grant-lands.

2nd. But Counsel for State contends that if this be true, still the sale to the Jacobs *et al.* was null & void because the Levee Board was not at the time of the sale nor is it now the owner of this land inasmuch as no formal deed has ever been made to it by the Register & Auditor as required in the acts. It is admitted that no formal deed has ever been made by the Register & Auditor, but the defendant contends that none is necessary, nor was any required by the State except as to land forfeited to the State for non payment of taxes.

After a careful study of Section 9 of 1892 & its subsequent amendments we are convinced that defendant's contentions are correct, and that the formal deeds to be made by the Register & Auditor applied strictly to those lands forfeited to the State for the non-payment of taxes. Section 9, after stating what lands were donated went on to say: "Where the State has become owner by or through tax sales, conveyances thereof shall only be made to said Board of Commissioners after the period of six months shall have expired;" and after making other provisions relating strictly to tax lands, said: "After the expiration of the said Six months (Evidently meaning the Six months to redeem it) it shall be the duty &c. whenever from time to time (meaning evidently as the lands fall to State by forfeiture of taxes) said Auditor & Register shall be required, &c."

About the lands which had never been segregated from domain there could be no dispute, since all *(in globo)* had been do-

27 nated. But as to tax for forfeited lands it was different. There were outstanding titles, and the public had certain rights to redeem and various contest- might arise and the Legislature thought best that these lands should be specially deeded to the

Board in order to quiet conflicting title. In the other lands no such confest could arise and the grant, it seems to us conveyed all the title necessary to make the Levee Board the undisputed owner. That as to all lands except the tax forfeited lands, it was a grant *in presenti*, and carried title with the act itself. In Wright *vs.* Rosebery, 121 U. S. 488, The Supreme Court of the United States held that the Swamp land grant of 1849 & 1850 were grants *in presenti*, passing title to the lands mentioned, requiring only identification to render such title perfect. Under the swamp land grant certain class of lands were donated, "Wet & overflowed lands," and there would be much more reason that formal deed would be necessary in those grants than in this, because there, a certain class was donated, while here all lands owned by State were donated, and there was no reason for a formal deed further than the Legislative grant, which carries title on its face. In 159 U. S. Wis. Central R. R. *vs.* Forsythe, the Supreme Court held "A Congressional grant is a law as well as a conveyance and must be construed so as to carry out the intent of Congress."

In Schuliberg *vs.* Harriman, 21 Wal. 62. They said: "The rule that private present grants of undesignated lands is a mere contract to convey does not apply to Legislative grants which operate as laws as well as transfers and have such force as the Legislature intended."

Again in 97 U. S.: "Intent of Congress as indicated in the grant cannot be defeated by applying common law rules, which are applicable only as to transfers between private parties." See also 170 U. S. 331.

The formal deeds required by section 9 was evidently intended only for tax lands and the reading of the statute must not confuse us. In Lands *vs.* Huntington, 133 U. S. 22 the Court said: "Where in the preparation of an instrument attention is directed to a particular Subject, the ordinary force & scope of language therein should not be destroyed by words in another portion in the description of some other matter."

28 So in this case the fact that formal deeds should be made to tax lands does not mean that they should be made to all other classes mentioned before we reach that certain class.

Counsel for State refers us to the case of McDade *vs.* Bossier Levee Board 109 La., 625 where our Supreme Court held that the Bossier Levee Board did not become the owner of those granted lands until the Register & Auditor made a formal deed. At first we were inclined to follow that decision, but on mature reflection & further examination we have reached the conclusion that that decision was not conclusive of the point; inasmuch as it was not argued either in the lower or upper Court, but it seemed to have been reached hastily by the Court and not on the plain & sole issue as presented in this case. The ruling, as it struck us at the time (for we were of Counsel in the case) was influenced by the peculiar conditions of the case and the Court possibly did not realize the importance of the question. In that case plaintiff, McDade, had had possession of the Levee Board land for a number of years; had cleared, fenced and cultivated it in good faith, and the Levee Board claimed rent for a great

many years. The Court, under the peculiar circumstances, did not feel disposed to make McDade pay for all these years, since he had reduced it from the virgin forest to a fine well improved plantation, compromised by making him pay rent from date of the deed from Auditor & Register to Levee Board. The Levee Board did not contest the point & so the decision stands. It is true that in 114 La. 447 they approvingly refer to this case, yet there was no application of the principle necessary in 114 La. case. This was a question of recordation of title between two parties who had deeds from Levee Board but that very case they seem to have some doubt for they say: "The then condition of the title as between the State & Levee Board, sufficiently explains why the conveyance was taken in the form mentioned. It was not known at the time and it may be that it is not now known whether a perfect title to the land affected by the act No. 97 of 1890 (which is like act 74 of 1892) was conveyed to the Levee Board by the terms of this act, or whether something else was required & necessary to be done for the accomplishment of that result; this grave doubt in the minds of the Court several years
29 after the McDade & Hall cases seem to indicate that they are not yet sure that whether the grant was sufficient to pass title or that something more was necessary to be done.

The other cases refer-ed to by counsel for State involves tax lands, which must not be confused herewith. On the question of lesion by moiety we feel that under our construction it is not necessary to decide, but it is sufficient to say that in the case of the Shreveport Rod & Gun Club *vs.* Board of Commissioner-, 49 A. 1081, the question of lesion was found upon and under our construction is *res adjudicata*, as to the Levee Board.

For the reasons above set forth, the law and the evidence being in favor thereof it is ordered adjudged and decreed that the plaintiff-demands be rejected at its cost, and the defendant have judgment recognizing them as owners of the land sued for & all cost of suit.

Thus done read & signed in open Court on this April 13 1907.

A. J. MURFF,
Dist. Judge.

Filed April 13/1907.
J. H. LEVY, *Dy. Clk.*

A true copy.

1st Dist. Court, Caddo Parish, La.

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Motion for Appeal.

In this case now comes the plaintiff and moves for an appeal returnable according to law, Suspensive & devolutive, and for general relief.

WALTER GUION,
Att'y Gen'l.
E. W. SUTHERLIN,
W. P. HALL,
Of Counsel.

Filed Apr. 20, 1907.
A. F. HAYNES, *Dy. Cl'k.*

A true copy.

—— ——.

30 District Court of Caddo.

No. —.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Agreement, May 4, 1907.

In the above case in place of the tax receipts filed in evidence it is agreed that the amount of taxes paid by the defendant on the lands in question amount to the sum stated in its answer. In lieu of said tax receipts the clerk is authorized to incorporate this agreement as part of the transcript of appeal.

W. P. HALL,
Attorneys for Plaintiff.
ALEXANDER & WILKINSON,
Attorneys for Defendant.

Minutes of the Court.

Be it remembered, that the regular term of the First District Court in and for Caddo Parish, was begun and held at the Court House in the City of Shreveport, in said Parish, on Monday the 2nd day of

October, 1905, it being the first Monday in said month, when the following orders were made and proceedings had, to-wit:

Present: His Honor T. F. Bell, Judge, presiding; S. J. Ward, Sheriff, and F. A. Leonard, Clerk.

SHREVEPORT, LOUISIANA, WEDNESDAY, *April* 3, 1906.

Court met pursuant to adjournment, His Honor T. F. Bell, Judge, presiding.

The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

His Honor T. F. Bell recuses himself on account of having been former Counsel for Defendant, and appoints F. G. Thatcher, Esq., as special Judge to try this case.

Exception of misjoinder of actions filed.

SHREVEPORT, LOUISIANA, WEDNESDAY, *April* 11, 1906.

Court met pursuant to adjournment, His Honor T. F. Bell, Judge, presiding.

The minutes of yesterday were read and approved in open
31 Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Exception of no cause of action filed.

SHREVEPORT, LOUISIANA, THURSDAY, *April* 19, 1906.

Court met pursuant to adjournment, His Honor T. F. Bell, Judge, presiding.

The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

His Honor F. G. Thatcher, Judge *ad hoc*, presiding.

Case argued and taken under advisement.

SHREVEPORT, LOUISIANA, SATURDAY, *February* 16, 1907.

Court met pursuant to adjournment, His Honor T. F. Bell, Judge, presiding.

The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

His Honor Judge *Ad Hoc* Thatcher resigned.
Case set for argument for Friday.

SHREVEPORT, LOUISIANA, WEDNESDAY, *February* 20, 1907.

Court met pursuant to adjournment, *His* Honors T. F. Bell and A. J. Murff, Judges, presiding.
The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
32 CROSS LAKE SHOOTING & FISHING CLUB.

Plea of *res adjudicata* filed.

SHREVEPORT, LOUISIANA, SATURDAY, *March* 16, 1907.

Court met pursuant to adjournment, *His* Honors T. F. Bell and A. J. Murff, Judges, presiding.
The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Answer filed.

SHREVEPORT, LOUISIANA, MONDAY, *March 25th*, 1907.

Court met pursuant to adjournment, His Honor A. J. Murff, Judge, presiding.
The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Case argued and submitted on briefs to be filed.

SHREVEPORT, LOUISIANA, SATURDAY, *April* 13, 1907.

Court met pursuant to adjournment, *His* Honors T. F. Bell and A. J. Murff, Judges, presiding.
The minutes of yesterday were read and approved in open Court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Judgment for defendant. See decree.

SHREVEPORT, LOUISIANA, SATURDAY, *April* 20, 1907.

Court met pursuant to adjournment, Their Honors T. F. Bell and A. J. Murff, Judges, presiding.

33 The minutes of yesterday were read and approved in open court.

10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

Motion for appeal filed and granted, returnable to Honorable Supreme Court on 3d Monday in May, 1907.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing transcript from page 1 to 36 inclusive, is, with the Stenographer's evidence annexed a full, true and complete copy of all papers filed orders made, evidence adduced and proceedings had in suit No. 10432 on the docket of the First District Court of Louisiana, wherein the State of Louisiana is Plaintiff and the Cross Lake Shooting and Fishing Club is Defendant, as shown by the records of my office.

Given under my hand and seal of office this May 4th, 1907.

(Signed) F. A. LEONARD,
[SEAL.] *Clerk 1st District Court of Louisiana.*

34 District Court, Caddo Parish, Louisiana.

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

Evidence Taken on the Trial of the Above Numbered and Entitled Cause, on Trial Before the Hon. A. J. Murff, Judge of Section "B" of the First Judicial District Court of Louisiana in and for Caddo Parish, on March 25th, 1907.

Evidence Reported by R. B. Cook, Stenographer.

Appearances.—Messrs. Sutherlin & Hall, attorneys for plaintiff; Alexander & Wilkinson, attorneys for defendants.

Plaintiff's Evidence.

By consent of both parties the evidence, oral and written, taken in case No. 7340, on the docket of this Court, entitled T. L. Stringfellow *et al. vs.* W. B. Jacobs *et al.*, is introduced and used in the trial of this case, both parties reserving the objections and bills of exceptions, shown by said notes of evidence, as far as applicable to the issues in this case.

It is agreed that said copy of evidence shall go up in the original, without being copied in the transcript in case of an appeal.

Counsel for defendant objects to this evidence in so far as it seeks to show lesion or non-payment of the purchase price on the ground and for the reason that the Plaintiff can not contradict the recitals in the deed of sale to W. B. Jacobs, *et al.*, in so far as the present defendant is concerned, and that the recitals in said deed to W. B. Jacobs *et al.* can not be contradicted by parole testimony, so as to effect the defendant a third person as to W. B. Jacobs *et al.*

Objection overruled by the Court.

To which ruling of the Court, Counsel for Defendant excepts and asks that this note stand in lieu of formal bill of exceptions.

It is admitted that no deeds of conveyance of the land in
35 controversy have been executed by the Register of the State Land Office, or Auditor, or either of them, to the Board of Commissioners of the Caddo Levee District, and nothing of the kind has been recorded in the Conveyance Books in Caddo Parish, up to this date.

It is further admitted that the check for Eleven hundred dollars, shown by the evidence heretofore offered in Suit No. 7340, as having been formally deposited in the First National Bank and held by the Levee Board to be paid when the title is perfected, as shown by said evidence, is still in the same situation, as when suit No.

7340 was filed. That is to say the check is held by the Levee Board, as it was held at the time suit No. 7340 was filed.

Counsel for Plaintiff offered in evidence the Parish map, made by authority of the Police Jury.

It is agreed that all the maps may go up in the original without being copied.

To be filed and marked Exhibit "B."

It is admitted that the lands in question are located within the boundary of the Caddo Levee District.

Defendant's Evidence.

Counsel for defendant offers in evidence tax receipts, paid by the Defendant on the property, which is for the taxes on the property in controversy in this case.

It is admitted they were paid by the defendant.

To be filed and marked Exhibit No. 1.

Evidence closed.

I hereby certify that the above and foregoing contains a true and correct translation of my stenographic notes taken on the trial of the above numbered and entitled cause.

Shreveport, La., March 25th, 1907.

R. B. COOK,
Stenographer.

$40.

36

No. 10432.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

Note of Evidence.

Filed M'ch 25, 1907.

S. W. WILLIAMS,
Dy. Clerk.

37

(No. 7340.)

T. L. STRINGFELLOW ET AL.
vs.
W. B. JACOBS ET AL.

Index.

First District Court, Caddo Parish, Louisiana.

No. 7340.

T. L. STRINGFELLOW ET AL.
vs.
W. B. JACOBS ET AL.

Appearances.—Sutherlin & Hall and J. H. Shepherd, for plaintiffs; Alexander & Wilkinson, T. F. Bell & D. T. Land, for defendants.

38 Be it remembered that on the trial of the above styled and numbered cause on the 26th day of May A. D. 1902, in the First Judicial District Court, holding sessions of Court in and for the Parish of Caddo, State of Louisiana, before His Honor A. D. Land, the following evidence was taken:

All evidence of any kind whatever, offered by the plaintiffs in this case on this trial is objected to by the counsel for Defendants on the ground and for the reason that the petition herein contains contrary and contradictory demands and no evidence should be received in support of any of said demands until said plaintiffs have been required to elect or declare on which of the said contradictory demands they would prosecute this suit.

Objection overruled. To which ruling of the Court counsel for defendants except and reserve this in lieu of a bill.

Offered in evidence by plaintiffs the entire record in suit No. 5326 on the Docket of the District Court of Caddo Parish and 266 on the Docket of the Court of Appeals of first circuit for Caddo Parish, entitled the Cross Lake Shooting & Fishing Club *vs.* T. L. Stringfellow, including the oral and documentary evidence, opinions and judgments of the District Court and of the Court of Appeals and the minutes of the Court in said suit.

(I.)

Which offering is objected to by Counsel for defence on the ground and for the reason that the same is inadmissible and aterial to any issue in the case and on the further ground and ason that the evidence taken in said case is not admissible and material, not between the same parties nor involving the same sues as presented in this case: that the said evidence is an at-mpt to show that the property in dispute in this case is the prop-rty of the United States and such an effort on the part of the laintiffs discloses no interest whatever in them to prosecute this suit.

The objection is overruled as going to the effect of the
9 evidence and the evidence in the suits offered is admitted for the purpose of explaining the decree in the case. To which uling of the Court counsel for defendants except and reserve this n lieu of a bill of exceptions. This objection, ruling and bill of xceptions is to be made general to apply to all evidence of a similar haracter offered on the trial of this case.

Document offered, ordered filed in evidence and marked "A."

Offered in evidence admission of Counsel as to the fact that T. L. Stringfellow, who was defendant in No. 5236 just offered in evidence is one of the plaintiffs in the present suit, counsel for defendants admitting that it is a fact but objecting to it as being inadmissible evidence for the same reason stated above and reserving same bill of exceptions.

Same is filed in evidence and marked "B."

Offered in evidence by Counsel for plaintiffs, written admission, admitting chain of title and signed by Counsel for plaintiffs and defendants.

Same is filed in evidence and marked "C."

Offered in evidence for the purpose of showing *rem ipsam* merely the following deeds:

Deed from W. J. Crowder, president of Levee Board, to W. B. Jacobs and others of date Aug. 20th 1895.

Same is filed in evidence and marked "D."

Deed from W. B. Jacobs and others to Shreveport Gun Club of date Aug. 28th, 1895.

Same is filed in evidence and marked "E."

Deed from W. J. Crowder, president of Levee Board, to Shreveport Gun Club of date September, 19th, 1895.

Same is filed in evidence and marked "F."

40 The said deeds are offered with all of the endorsements thereon and with leave to substitute certified copies.

Offered in evidence resolution of Levee Board of Caddo Parish, of date September 20th, 1895, instructing their attorneys to bring suit to rescind the sale.

Same is filed in evidence and marked "G."

Offered in evidence map from Surveyor General's office showing traverse line of Cross Lake and other matters with certificate and endorsements thereon.

Which offering is objected to by Counsel for defendants on the ground and for the reason that it is an effort on the part of these

plaintiffs to show the land in question is unsurveyed and is the property of the United States and it is inadmissible for them to attempt to show or controvert the title of the Levee Board to the property in dispute. This objection is to apply to all similar evidence offered on the trial of this case.

Objection overruled as going to the effect of the evidence.

To which ruling Counsel for defence except and reserve this in lieu of a bill of exceptions.

Map offered filed in evidence and marked "H." In the event of appeal it is agreed that this map shall go up in the original form as a part of the transcript.

Offered in evidence by plaintiffs for the purpose of showing *Rem Ipsam,* deed from Shreveport Gun Club to Cross Lake Shooting & Fishing Club of date September 18th 1896, with leave to substitute a certified copy.

Same is filed in evidence and marked "I."

Plaintiffs offer in evidence, the evidence taken in the case of the Shreveport Rod & Gun Club and others against Board of Commissioners of Caddo Levee District and others, Caddo Levee Board, Intervenor, No. 5046 in the District Court of Caddo Parish and No. 12170 in Supreme Court.

41 This evidence is objected to by Counsel for defendants on the ground and for the reason that it is another effort on the part of the plaintiffs to show that the property belonged to the United States and not to the State or Levee Board and on the further ground that it is an effort to impeach collaterally the judgment rendered in that case and to have the Court again review the questions present- in that case and on the further ground that it is an effort to show that the land in controversy was a lake and not land which is inadmissible in this case and further for the reason that it is *res inter alios acta.*

Objection sustained. To which ruling counsel for plaintiffs except and reserve this, their bill of exception and with permission they annex said evidence as it now appears in the transcript in said case No. 12170 in the Supreme Court of this State, to this their bill of exceptions and make said evidence a part of their bill of exceptions.

Offered in evidence the testimony of S. J. Enders found on pages 143 and 149 inclusive.

Objected to by Counsel for defence as irrelevant.

Objection overruled and bill reserved by Counsel for defence.

Offering filed in evidence and marked "J."

Testimony of W. B. Jacobs, as found on pages 151, 152 & 153, offered in evidence by Counsel for plaintiff.

Objected to by Counsel for defence on the ground and for the reason that it is irrelevant and on the further ground that the witness is in Court and is competent, willing and able to testify.

Objection overruled. To which ruling Counsel for defence except and reserve this in lieu of a bill of exceptions.

Testimony offered, ordered filed in evidence and marked "K."

S. N. KERLEY upon being duly sworn, testified as follows:

Q. Mr. Kerley, you are the secretary of the Board of Com-
42 missioners of Caddo Levee District?

A. Yes sir.

Q. Have been for quite a number of years?

A. Yes sir. Since its organization sir.

Q. Since 1892?

A. Yes sir. Since 1892.

Q. You were secretary of the Levee Board then at the time that the deed was made in 1895 to Cross Lake by Mr. Crowder as president of the Levee Board?

A. I was secretary at the time the sale was made, yes sir.

Q. To Jacobs and others?

A. Yes sir.

Q. Has the price of that sale ever been paid in money into the treasury of the Caddo Levee Board?

A. I have a certificate for the deposit of the amount.

Q. Will you produce it please?

A. Yes sir. (Witness produces paper.)

Offered in evidence by counsel for plaintiff certificate referred to with leave to substitute certified copy.

Same is filed in evidence Copy to be marked "L."

Offered in evidence by Counsel for plaintiff certified copy of resolution of the Caddo Levee Board of date September 1st 1896.

Copy of which is to be filed in evidence and marked "M."

Offered in evidence by counsel for plaintiff's certified copy showing action of Caddo Levee Board with regard to this land of date November 15th 1900.

Copy to be filed in evidence and marked "N."

Offered in evidence by plaintiff's certified copy of resolution of the Caddo Levee Board of date —— proposing to accept as a compromise an additional sum of $3500.00 for the land in controversy.

Certified copy to be filed in evidence and marked "O."

43 Offered in evidence by plaintiff's certified copy of resolution of the Board of Commissioners of the Caddo Levee District of date November 28th, 1900, to the effect that the board would not consider any bid for the lands under five dollars per acre.

To which offering counsel for defence object on the ground and for the reason that it is irrelevant to any issue in the case, has no connection with the land in controversy, passed long after the transaction under investigation was consum-ated and it is an attempt by the plaintiffs to show inferentially that the land is worth much more than that paid for it at a time long after the sale was consum-ated.

Objection overruled as going to the effect of the evidence. To which ruling of the Court Counsel for defendants excepted and reserves this in lieu of a bill of exceptions.

Document offered filed in evidence and marked "P."

Q. About what price have they been selling the Lake lands in this region above Shreveport for the last two years?

Objected to by Counsel for the defence on the same grounds previously urged. Which objection the Court overrules and to which ruling the defendants except and reserve this in lieu of a bill.

A. I don't know that I could go back two years. Lately it has been from five to ten and fourteen and fifteen dollars but as I say I don't know that that will go back for two years. The records will show that.

Counsel for defence also urges the further objection that the records are the best evidence of the sales inquired about.

Q. The Red River Swamp lands have been advancing in value for the last two years have they not?

A. I judge so sir from the price they have been bringing.

Cross-examined:

Q. Mr. Kerley the deed from the Levee Board to the Gun Club recites $1100.00 cash. How was that paid? When the deed
44 was passed was not a check given in payment of the $1100.00?

A. My recollection is very faint on that but it was called to my mind this morning that there was three checks given aggregating $1100.00.

Q. That was at the time of the passing of the deed?

A. The original sale,—yes sir.

Q. When were those checks ever returned to Jacobs or the Gun Club?

A. That I can't remember unless it was when the certificate of deposit was issued.

Q. They were then returned.

A. They must have been. I have not got them now.

Q. Did Mr. Jacobs get the cash and give or tender you the cash in payment of those checks?

A. I don't remember that sir. I remember he said the day of the sale he would give me the money if I wanted it and I said "tomorrow will do." He offered it to me in that way. I took the checks in payment. There were so many transactions that I don't remember.

Q. Did the Levee Board ever present those checks for payment to the bank?

A. No sir. I think not. My recollection is that the question of title came up and Mr. Crowder told me to wait until it was arranged.

Q. Well now was it not the money that you deposited in the bank when you got that certificate of deposit?

A. That I don't remember sir. I can't remember that.

Q. When you got that certificate of deposit did you write to the auditor of the State?

A. Yes sir.

Q. Did you get a reply from him?

A. Yes sir.

Q. Have you got that reply?
A. Yes sir. The law requires me to make this report and I held his reply for my own protection.

45 Letter from the Auditor of the State to S. N. Kerley offered in evidence by Counsel for defence.

Same is filed in evidence with leave to substitute certified copy,—copy to be marked "1."

Offered in evidence by Counsel for defence certified copy of portion of the minutes of the Caddo Levee Board of date April 5th, 1898.

Same is to be filed in evidence and marked "2."

Q. Did that resolution refer to these lands in controversy?
A. Yes sir.

Offered in evidence certified copy of statement of the minutes of the Caddo Levee Board of date December 23rd, 1897.

Same is filed in evidence and marked "3."

Q. Now Mr. Kerley was Mr. Jacobs one of the purchasers that was at that meeting—asking for confirmation of his title?
A. Yes sir. That is my recollection.
Q. What bank does the Levee Board deposit its funds with?
A. The First National Bank. That is their petit cash you know. We remit the proceeds of the sale of lands to the Auditor.

By Gen. BELL:

Q. Mr. Kerley, this certificate of deposit, is it not a fact that that was not due until after the termination of the suit in the Supreme Court?
A. I rather think it was sir.
Q. Well then I will put it this way; Did you not as secretary remain in possession of the certified checks given you in the first instance until the termination of the suit?
A. That is my recollection,—yes sir.
Q. After the termination of the suit then the certificate of deposit was given?
A. Yes sir. The certificate of deposit was issued on that

46 resolution there.

Q. After the termination of the suit?
A. That is my recollection,—yes sir. After the resolution had been passed authorizing——
Q. Yes sir. I understand.

Re-examined:

Q. It was your understanding that the money was never to be paid until the title was effected?

Objected to on the ground that it contradicts a written document. Objection overruled.

A. Yes sir.
Q. Mr. Jacobs is president and one of the chief owners of the First National Bank?

A. Now he is,—yes sir.

Q. Was he not at that time during all of these transactions?

A. Signed as president,—yes sir.

Q. Mr. Jacobs you say that the First National Bank was the depositary for the Levee Board in petit cash?

A. If you will allow me to explain, the law requires me to remit the proceeds of the sales that comes into my hands to the State treasurer and I draw on the State treasurer whenever it is necessary for five hundred or a thousand dollars current expense. The First National Bank has always for the last few years been our depositary but I send a statement to the auditor as to expenditures.

Q. Well an amount as large as 1100 dollars, did you deposit that in the bank or did you remit it to the State treasurer?

A. Any amount that I received I would remit to the treasurer under the law and when I want money for current expenses I draw on the auditor and the bank cashes that for us to deposit it subject to order of the board. That bank has been our depositary some time.

Q. Did you write to the Auditor when that certificate was given you?

A. Yes sir. I have his letter which I hold.

Q. That money is not now subject to your order is it?

A. Not at all,—no sir.

47 Q. You couldn't draw it to pay expenses or anything of that kind?

A. No sir.

Q. You couldn't get one cent at the First National Bank on that order?

A. I suppose I could but I wouldn't try to do it.

Q. You simply held it as custodian under the conditions mentioned and under authority of the order to you under the resolution?

A. Yes sir.

Recross-examined:

Q. Mr. Kerley in answering that question there, it was your understanding that the money was not to be collected until the title was perfected. What money? The money on the certificate of deposit?

A. The certificate on deposit. It speaks for itself Captain.

Q. Well you could have gone at any time and collected it?

A. Yes sir.

Q. At the time the trade was made and the deed passed over certified checks were given?

A. That is my recollection.

Q. That could have been collected at any time if you had not been prohibited by the board?

A. That is a fact.

Q. That was the board's own action?

A. As far as I can remember.

It is admitted that no deeds of conveyance to the lands in con-

troversy have been executed by the registra of the State land office or auditor or either of them in favor of the board of Commissioners of the Caddo Levee District and nothing of the kind has been recorded in the conveyance books of Caddo Parish. It is further admitted that at the time the Caddo Levee Board agreed to accept $3500 and confirm the title to these defendants, it made application to the registra of the State land office and Auditor for title as alleged in plaintiff's petition and that shortly thereafter this suit was filed and before any action was taken.

48 L. G. PHILLIPS, upon being duly sworn, testified as follows:

Q. Where is your residence?
A. I live in Ward "5."
Q. In the Parish of Caddo?
A. Yes sir.
Q. How long have you live- at that place?
A. 20 years.
Q. How close are you to the Cross Lake Bed?
A. Well my residence is within about a mile of Cross Lake Bed.
Q. You are familiar then with the character of the land?
A. Yes sir.
Q. The land in dispute in this controversy?
A. Yes sir.

Counsel for the defence object to any evidence tending to show the valuation of the land in controversy before now or at the time it was transferred from the Caddo Levee Board to the Gun Club on the ground and for the reason that it is irrelevant, immaterial and is an effort to force the Court to again pass upon the question of lesion formally passed upon by the Supreme Court and stricken from plaintiff's petition in this suit on motion to require them to elect. This objection to be made general to all evidence of whatever character offered on the trial of this case.

Objection overruled. The evidence is admitted for what it is worth to support the allegation of a donation in disguise. To which ruling counsel for defence except and reserve this in lieu of a bill.

Q. What is your occupation?
A. I am a farmer.
Q. Farmer and have been for twenty years or more?
A. Yes sir.
Q. What is your estimate as to the value of these lands in this Cross Lake bed?

49 A. Well I regard the level lands from which the water has receded very valuable. I never saw more productive land notwithstanding I have been farming on Red River for 30 years. I would say a safe valuation would place that land at $15.00 an acre.

Q. Do you know that those lands or parts of them have been leased to various persons by the defendants in this suit?
A. Who are the defendants?

Q. Mr. Jacobs and Enders and——

A. I don't know. They did lease them to the Gun Club——

Q. Well it is the Gun Club now,—they are the defendants.

A. Well I know they had it leased.

Q. Can you give us any idea as to the quantity they have been leasing?

A. No sir. I know of one person,—one joining my land that leased from them a small place but I don't know how much and I heard there were other parties but I don't know how much.

Q. The lands are being cultivated then?

A. Yes sir.

Q. That is what you spoke of as being under lease?

A. Yes sir. But in this case it was part hill land,—part alluvian.

Q. What is the real value of alluvian?

A. As to the real value I don't know——

Q. Well what is the rental value of level lands generally in Caddo Parish?

A. Well Red River you know, that is owing to the locality and its nearness to Shreveport,—well say from 6 to 10 dollars an acre.

Q. How far is this Cross Lake land from the City of Shreveport?

A. About 8 miles.

Q. Beginning about how close to the City?

A. Oh well it is nearer than 8 miles. I suppose three or four miles.

Cross-examined:

Counsel for defence reserving the rights of defendants to buy, propounds the following questions on cross-examination:

Q. Do you consider the bed of Cross Lake as valuable as the bed of Soda Lake.

50 A. I don't know much about the character of the Soda Lake land. I consider the bed of Cross Lake as valuable as any land I ever saw in cultivation.

Q. Well now I will ask you,—don't you know that out there where the K. C. road is that you will find on the surface a loblolly,—a soggy lobolly in which you can stick a fishing pole——

A. I have known it to be that way.

Q. Well the engineers of the K. C. road had to abandon their dump and it was because they found that to be the fact there?

A. I don't know about that but I do know that there is land up there known as Buzzard Island sitting out perhaps 200 yards on the hill kinder and several years ago it was regarded as absolutely impossible ever to cross a horse over Buzzard Island and while I don't know anything about the process of the filling of the cause of the change but a man can drive a loaded wagon from Buzzard Island to the hills.

Q. Well how deep was this land in controversy covered by water this last spring?

A. Well really it is different depths. You know there are low places and high places like you find in all lake beds.

Q. How deep was the deepest part covered?
A. I suppose the highest part might be five feet or something like that.
Q. That was this spring?
A. Yes sir.
Q. Well now in some of the places it merely covered the ground I reckon?
A. Yes sir.
Q. It ranges from five feet to nothing?
A. Yes sir.
Q. About what proportion of the land in controversy was covered by water this year?
A. I can't say that. I only visited a portion of it.
Q. Was not a majority of it covered by water this year?
A. I can't say that.
51 Q. Well was not what we had in the river this year high water?
A. It was not the highest water.
Q. Well is it not a fact that when Red River is 17 feet on the gauge here that this land is under water?
A. From Red River?
Q. Yes sir.
A. I don't think so.
Q. High water would be about 37 feet on the gauge here. Now is it not a fact that when Red River registers 17 or 18 feet on the gauge that practically all of the land in controversy is under water?
A. I don't think there is any back water from Red River.
Q. I don't mean back water but isn't this land covered when the river is at that stage?
A. I don't think it is. I think there would be a considerable portion of it out if there would be no rain water to fill it from the hills.
Q. Well now you spoke of hill land. You don't mean that the hill land was the bed of the lake?
A. No. I was talking about that part as the margin of the lake you understand.
Q. You know the land that Mr. Dillon bought?
A. Yes sir.
Q. Do you know the land that Cooper & Leonard bought?
A. No sir. Only in a general way.
Q. Did you ever go all over the land in controversy?
A. No sir.
Q. Wouldn't you have to go in a boat if you went?
A. Yes sir. Some portions of it.

Re-examined:

Q. Do you mean to say that you would have to go in a boat over all of this land?
A. No sir. Some portions.
Q. About what portion?
52 A. Do you mean at the present time?
Q. Yes sir.

A. Well I have not been but a short distance where my land runs near the lake and I don't know what conditions exist there. I don't know how far the water extends down.

Q. There are people in there cultivating that bottom land?

A. Yes sir. There is a big clamor for that land now. Big demand for it.

Q. This lake is much nearer Shreveport than Soda Lake is it not?

A. Yes sir.

Q. In a manner lies between Soda Lake and Shreveport?

A. Yes sir. Practically between.

Q. The proximity to Shreveport would add some value to the land I suppose?

A. Yes sir.

Q. This Buzzard lake that you spoke of was separated from the high land by the bed of the lake was it not?

A. Yes sir.

Q. Now you say that was formerly in such a condition that you couldn't ride a horse across to Buzzard Island but that now you can drive a loaded wagon to Buzzard Island?

A. Yes sir.

Re-examined:

Q. Can you do that now at all times of the year?

A. I have not seen it tried at all times of the year.

Q. You mean in the summer time?

A. Yes sir.

JNO. MONKHOUSE, upon being duly sworn, testified as follows:

Q. How far do you live from Shreveport?

A. About four miles.

Q. What is your occupation?

A. I am a nurs-ryman.

Q. Do you live contigeous to Cross Lake?

A. Yes sir. Own some land joining it.

53 Q. How long have you lived there?

A. 20 years or a little over.

Q. Have you had occasion to go over the land and examine the land in controversy?

A. Not all of it. It is all in the vicinity of where I live.

Q. You live how far from Mr. Phillips?

A. Three or four miles.

Q. He lives further west than you do.

A. Yes sir.

Q. What is your estimate of the value of the land Mr. Monkhouse?

A. Now?

Q. Now.

A. Well now it has got to be pretty valuable.

Q. What do you say it is worth?

A. In my immediate vicinity just where I know about, I used to

own a mile and a half of the ground of that lake. I own ½ mile yet. The other miles west has been sold. That was sold about four years ago,—300 acres for 30 dollars an acre.

Q. What is the value of the land adjoining that that you sold for $30.00 an acre?

A. Well the lake land that don't get under water is as valuable if not better than the land that was sold.

Q. Would it rent for more or less money?

A. More money. More demand for it. I still own a half a mile fronting the lake yet.

Q. Do you know that people are cultivating some of the lake bed now?

A. Yes sir. Been cultivating it a long time.

Q. What sort of crops does it make?

A. It makes good crops all the time. Of course some of it gets overflowed some seasons.

Q. From what you know of it you say there has been a great deal of it cultivated a long time?

A. Yes sir.

Q. The people who are cultivating it are cultivating it regularly?

A. Yes sir.

54 Q. Regardless of the water?

A. There is a good deal of it that never gets under water any time no matter how high the water gets.

Q. What do you consider that land worth?

A. In my vicinity I would consider it worth $25.00 an acre any way. I would think it was worth $20.00 an acre five years ago.

Cross-examined:

Q. Well Mr. Monkhouse this land that never gets under water is hill land. It is not the bed of the lake?

A. There is five or six hundred acres that has never been surveyed in there that never gets under water that is next to me.

Q. The rest of it gets under water?

A. Yes sir.

Q. That was under water this year was it not?

A. I have not been there this year.

Q. Is it not a fact that a very little rise in the river throws the rest of it under water?

A. Not the five or six hundred acres next to me.

Q. That don't get under water?

A. That never gets under water.

Q. Well the rest of it gets under water when the river is at a navigable stage does it not?

A. No sir. No sir. There is thousands of it that don't get under water when the river is at that stage. Cattle live down there in the winter. Good grazing place.

Q. Grass grows under water don't it?

A. No sir.

Q. Grass don't grow under water?

A. No sir. Not under the water.

Q. What sort of land was that that you sold and how much was in cultivation?

A. Very little of it was in cultivation when it was sold.

Q. Red River land has recently advanced in value hasn't it?

A. Yes sir.

Q. It is now higher than was ever known before?

A. I expect it is. This land that I am talking about I
55 think was worth $20.00 an acre five years ago.

Q. I never asked you about five years ago.

A. I was trying to average it for you. You know I wanted to give you the information. I will make this statement to you. I wrote to the Secretary of the Interior and tried to buy this land for my boy several years ago when I wanted to put my sons on it and he wrote back to me that it was unsurveyed lands——

Q. We will object to all of that.

A. Well if you object to it I don't want to give it to you. I have got nothing to do with the suit. If there is any information wanted I will try to give it to you. That is all. I have been there over 20 years. I will give you $10.00 an acre for that 40 that joins me.

Q. Yet you say it is worth $30.00?

A. I say it is worth $25.00. I want to make a good speculation. I wouldn't give $10.00 unless it was worth $20.

Q. You say that land there never gets under water?

A. I say that there is five or six hundred acres there that never gets under water no matter how high the water gets. It never has been since I have been there.

Q. Is it not a fact that all of the land you are speaking of there was under water in 1890 and in 1892.

A. No sir. It never got under water. This place would be overflowed before that would get under water. Yes sir. Yes sir. I know what I am talking about. I want to say that Shreveport would be overflowed before that land would get under water.

Re-examined:

Q. How long have you lived there by it?

A. Over 20 years.

Q. It has not been under water during any of that time.

A. No sir. It never has. I am speaking of five or six hundred acres outside of that unsurveyed land.

Recrossed:

Q. You mean the bed of the lake.

A. No. I don't mean the bed of the lake.

Q. Well that is what we are talking about. I know that
56 outside the traverse line there are several thousand acres of land that never get under water no more than this court house here.

A. Well you get the township map of section five and section four and that will show you it calls for water.

Q. Now the traverse line is the surveyor's line. You know that in many places is a long ways from the bed of the lake. Now the land

you are speaking of as being so valuable is the land between the traverse line of the surveyors and the lake bed?

A. I didn't speak of that as being so valuable. I spoke of that as never getting under water. The valuablest land is down closer to the bank.

Q. Is there is any part of that lake bed there it would get itself under water.

A. Well if you get the township map I can show you.

Q. Oh we are not going by the township map.

A. That is the only thing we can go by.

Q. What part of the lake bed is it that never gets under water?

A. There is one third of it that never gets under water.

Q. Do you mean one third of it never gets under water?

A. Do you mean the channel?

Q. I mean the lake bed Mr. Monkhouse. Any man of intelligence knows what the lake bed is.

A. Well let me ask you for information. Hasn't the Gun Club bought the land. Does it get all of the unsurveyed land?

Q. No sir.

A. Well it shows on the map to be water and the map calls for it. There is three hundred acres of section five and that is all there is and the other is water. Now there is the map. It is put down in the map as water. That is the only thing to go by. There is the only thing to go by. There is three hundred acres in section five. Now you know how much a section is and there is three hundred acres of land there.

Q. Oh I don't want you to be talking to me about a map. I haven't said anything about the map. I know you have got sense enough to know whether it is the lake bed or whether it is
57 not. That is what I am trying to get you to answer. Now I know myself that between the lake and the traverse line that there are thousands of acres of land that never overflow.

A. Well that is what I mean.

Q. You are not speaking then of what is the lake bed?

A. I am speaking about the land that is shown as water on the map is all.

Re-examined:

Q. This land you are speaking about, this 600 acres is level land is it?

A. Yes; Good cultivatable land.

Q. Level land?

A. Yes sir.

Q. It is not hill land?

Q. Some of it is hill land but it is good land to cultivate.

Q. You are speaking of level land when you say lands adjoining your land in section five?

A. Yes sir.

Q. Do you know that these lands are lands claimed by the Gun Club?

A. Yes sir. I know they put a fence along there close up to my land.

Q. You understand that they claim all of the lands inside of the traverse line of Cross Lake?

Objected to for the reason that his understanding is totally irrelevant to any issue in this case. The deeds are the best evidence.

Objection sustained.

Q. Mr. Monkhouse does the Gun Club claim all of the land inside of the traverse line of Cross Lake?

—. ——.

S. H. SIBLEY, upon being duly sworn, testified as follows:

Q. Where do you live?

A. I live in Shreveport. Not in Shreveport either. Just out of the limits.

Q. Have you ever lived near Cross Lake?

A. I lived within a mile and a half or two miles.

58 Q. For how many years have you known Cross Lake?

A. I have known Cross Lake since '48 or '9.

Q. Is it a navigable stream?

A. It was. I have seen Steam boats run Cross Lake.

Q. Before the war and since?

A. Before and since.

JNO. MONKHOUSE, upon being recalled, testified as follows:

Q. Mr. Monkhouse, what have you to say as to whether Cross Lake is a navigable stream or not?

A. Now Judge I will try to go a little slower. Yes sir. It is a navigable stream.

Q. Upon what do you base your statement?

A. Since I have been here they have boated cord wood up and steamed cotton down from the Woodard place.

Q. Brought cotton from the Woodard place on a steam boat into Red River from Cross Lake?

A. Yes sir.

Q. Did they flat boat anything?

A. Plenty of cord wood and I know they steamed cotton down here from the Woodward place.

Q. The Woodward place is on Cross Lake?

A. Yes sir.

Q. About when?

A. That was soon after I came here.

Q. How long ago did you come here?

A. Thirty years.

R. W. GEORGE, upon being duly sworn, testified as follows:

Q. How long have you known Cross Lake Mr. George?

A. From boyhood to date.

Q. Well approximately how long?

A. Well I am now 65 and my father moved to this Parish in '45.

59 Q. You have known it since you moved to this Parish?

A. Yes sir.

Q. What have you to say as to whether or not it was a navigable stream?

A. I know sir that it was once. I know of boats going up in Cross Lake as far as the Beckam Landing and getting cotton.

Q. Was it navigable before the war?

A. Yes sir.

Q. Do you know of its being navigable since the war?

A. Well O don't know the exact year nor dates that boats went up there. I know that they went up as far as what is known as the Beckam landing and got cotton.

Q. Well do you know of its being used for flatboating purposes?

A. It was, yes sir. For cotton and wood.

By the COURT:

Q. Do you know whether in 1848 or 1849 it was navigated then?

A. Well I just stated that I didn't remember the years.

Examination continued:

Q. Do you know of its being used for floating out timbers?

A. Yes sir. I never saw the timber coming out but I have been told that quite a lot of timber came out through Cross Lake from up at the Pine woods at the head of Cross Lake.

Q. Does it drain a considerable scope of country up through there?

A. Well there is some bayous leading into the head of Cross Lake and outside of the lake the land is elevated. It is high hilly country and these bayous are what fill Cross Lake now.

H. H. YOUREE, upon being duly sworn, testified as follows:

Q. Mr. Youree, you live here in Shreveport?

A. Yes sir.

Q. Vice President of the Commercial National Bank?

A. Yes sir.

Q. Well you know something of this Cross Lake?

A. Yes sir.

60 Q. Can you state what you think it is worth? What would you be willing to give for the land in controversy?

A. I understand there is 11,000 acres?.

Q. Yes sir. That is what it calls for.

A. I will give $50,000.00 in cash for it.

Q. Well do you think it is worth that?

A. I think it is worth $75,000.00 to $100,000.00. I will give $50,000.00 for it.

Q. You are amply able of course to give that much for it.

A. Yes sir.

Cross-examined:

Q. You have taken quite an interest in this Lake land matter have you not?
A. Yes sir. Had two fights about it.
Q. You had an opportunity of buying it 7 years ago?
A. I thought I did have it.
Q. You testified in that case?
A. I don't know that I ever testified in the case.
Q. Oh yes you did.
A. Well if I did, I did of course but I don't remember it.
Q. You testified in that suit brought to set aside,—you remember you employed the lawyers?
A. Yes sir. And paid them.
Q. You felt interest enough to employ the lawyers in that case and you also testified in the case?
A. Yes sir.
Q. Do you remember your testimony?
A. No sir.
Q. You don't think it was worth as much then as you do now?
A. No sir.
Q. Don't you think that even now its value is a speculative value?
A. No sir. I don't think so.
Q. You did think so then did you not?
A. Yes sir. That has been several years ago. Things have changed considerable here in the last 3 or 4 years.

61 Re-examined:

Q. Last year he asked you if you did not feel that you and others had been badly treated here in not being allowed to bid on this land if it was going to private purchasers.
A. If you will allow me to explain, I had been made to believe that all of the water for the Water Works came from that land. I was not acquainted with the district at the time they bought it but I had an understanding with Mr. Enders that I was to *to* get the Water privilege for the Water Works in which I was interested at that time.

Recross-examined:

Q. You wanted it for Water Works?
A. At that time.

Re-examined:

Q. This they denied you after they got this deed?
A. Yes sir.
Q. By making that representation to you they prevented you from bidding on it?
A. That is at that time,—yes sir.

Objected to by counsel for defence on the ground and for the reason that that is no ground set up in the plaintiff's petition.
Objection overruled and bill of exceptions noted for counsel for defence.

Q. That was the cause of your taking an interest in the suit?
A. Yes sir.

J. S. NOEL, upon being duly sworn, testified as follows:

Q. Where do you live?
A. Well I live in this Parish in Morningsport.
Q. How long have you known Cross Lake?
A. Well I was born in Caddo Parish in 1844.
Q. You have lived in the upper part of the Parish ever since?
A. Yes sir.
Q. The lake lies between your residence and Shreveport?
A. Yes sir. And I own property running over to Cross Lake.
62 Q. You have known it then all of your life?
A. Yes sir.
Q. What have you to say as to the value of the land in dispute in this case?
A. There is how many thousand acres?
Q. Well there is 11,000 acres. Well will say what the value was in Jan. 1902.
A. How much lake?
Q. I don't know. Part lake and part land.
A. Well I think the land is worth $50,000.00.
Q. Would you be willing to give that amount for it?
A. Yes sir. I would and take the lake too.
Q. That is this 11,000 that is now in dispute?
A. Yes sir.
Q. Well you are a man able to pay it?
A. Well I think I am.
Q. Well is it a navigable stream or was it a navigable stream when you first knew it?
A. Well the boats went up there and brought out cord wood and cotton and such like.
Q. Steam boats?
A. Well there has been some little boat up there since. Some tug boat. There was a ditch down the lake and they boated down the ditch. It was kinder like a canal. They would have ropes and walk along the side and pull the boats up.
Q. Well when the water was higher it was steam boats of course?
A. Well there was a little tug boat up there since the war I think.
Q. Well it was operated by steam?
A. Yes sir.
Q. You think it is worth over $50,000.00 and you would be willing to give that?
A. I think it is worth about $150,000.00. I would like to have it at $50,000.00. I think I would have something to leave my children and it is so near to Shreveport.
Q. You have seen it frequently?
A. Yes sir. Of course I know it. I have been on it since my boyhood.

63 Cross-examined:

Q. When was the last time you was on it, Mr. Noel?

A. Well I pass it every two or three days on the cars and then I go out horse-back.

Q. How long has it been since you was on it on foot or on horse back?

A. Well it has been sometime since I was on it a-foot.

Q. How many years?

A. I passed through there about two years ago in a buggy.

Q. You have not seen it since?

A. Well I can see it you know on the cars.

Q. Do you know how much of it is under water now?

A. I can't tell you how much there is but I know that there is a good deal of it dry.

Q. You don't know how much is under water?

A. There is a great deal of course. There is a lake up there and then there is a channel that runs down into what we call Cross Bayou. This last year the water didn't get over and it didn't get over in 1886. It was covered in 1892 and in 1890 it was entirely covered.

Q. Are you sufficiently familiar with the bed of that lake to tell me the character of the soil?

A. Well I don't know.

Q. Have you ever examined it with reference to that?

A. Well I have had no particular interest in examining the soil. I never owned any of it. I know it is productive soil. I have seen the crops growing on it.

Q. Where did you see the crops? From the R. R.?

A. Well I have seen that up there that is on the Club land. At least that has been posted.

Q. Do you know though whether the land that you saw cultivated up there is included in this Gun Club area or not?

A. Well the reason I think it is included is because it has been posted up there.

Q. How do the lands on the upper side of the K. C. Road compare with those on the lower side?

64 A. I think it is about the same class of land.

Q. Don't the value of all of these lake lands arise from the Red River deposit there?

A. Well that improves it some.

Q. Without it what would they be worth?

A. Well I don't know. It is improved. More productive.

Q. Well is it not a fact, or have you ever explored it sufficiently to ascertain, that the further you get from Red River, the thinner this deposit of Red River sediment?

A. I suppose it is thinner up there.

Q. Have you ever explored it enough to know that when you get below that sediment it is a soft blue clay or loblolly?

A. Well in some places it is and in some places it is not.

Q. Don't you know that it is a fact right where this K. C. Road crosses? Don't you know that the engineers made boarings there

and found that to be a fact and changed their idea about building a dump and built a trussle work there?

A. I know that the contract was let out for grading and I think the reason they did that was because they found it cheaper to do that than to do the grading.

Q. Well I asked you if you had ever examined with reference to that. Do you know that it is so?

A. I don't know. No sir.

Re-examined:

Q. Well they have recently made a dump have they not?

A. Yes sir.

Q. So that geological conclusion loses its foundation.

A. They have made a dump over the trussle.

Recrossed:

Q. The dirt was brought from the hills was it not Mr. Noel?

A. Yes sir. They are building it up with dirt from the cuts in the hills.

Re-examined:

Q. You have no interest in this matter and have never had any interest in either of these Gun Clubs?

A. No sir. None at all.

65 Q. Are you not one of the directors of the First National Bank, of which Mr. Jacobs is president?

A. Yes sir. Of course if Mr. Jacobs will just pardon me I will tell you this—No, I won't say it.

Recross-examined:

Q. Have you not taken a very active part in the matter from the very beginning?

A. I have. Yes sir. I want to give my reasons for doing so. I don't blame Mr. Jacobs at all. I thought it was a levee Board swindle and I thought if anybody should have it it certainly should be free to the people in my ward. At first I thought it would be a fishing club and a hunting club and I soon found out it would be monopolized and I was opposed to it. For instance Mr. Enders wrote me up in the paper once about something——

Re-examined:

Q. You are a member of the police jury from the ward where this lake is situated?

A. Yes sir.

Q. You were then and are now?

A. Yes sir.

Q. Personally you had no objection to Mr. Jacobs getting it for nothing if he could?

A. No sir. But as a representative of the people I was going to try to keep him from getting it if I could. I believed it was a regular Levee Board swindle. I don't know whether Mr. Jacobs was in

the swindle or not but I believed it was a regular Levee Board swindle and I acted as a representative of the people. For that reason I opposed it. Now if there is any more questions that the other side wants to ask me I am ready to answer them.

A. C. PITTS, upon being duly sworn, testified as follows:

Q. Where do you reside Mr. Pitts?
A. Rodessa.
Q. In Caddo Parish?
A. Yes sir.
66 Q. About how far from here?
A. 40 miles.
Q. Upper end of the Parish?
A. Yes sir.
Q. Does this Cross Lake lie between where you live and Shreveport?
A. Yes sir.
Q. How long have you known Shreveport?
A. Ever since I was born.
Q. How long is that?
A. 30 years.
Q. What have you to say as to the value of this 11,000 acres of land in dispute?
A. Well really I don't know but little about Cross Lake only just where the road crosses up here.
Q. Can you say anything about what you do know?
A. Well if it is all like the part that the road crosses it would be very valuable but so far as above there, I don't know anything about it. In fact I was never on it. I have been crossing up here though all my life.
Q. Could you fix any value on that you see there per acre?
A. Only by comparing it with the land up there near us. 20 to 25 & $40.00 an acre.
Q. It is selling in your country up there from $20.00 up?
A. Yes sir.
Q. This same land that you see up here where the K. C. road crosses and the dirt road too I believe.
A. Yes sir.
A. *Yes sir.*
Q. The same land is selling in your country for $20.00 per acre?
A. Yes sir. It is all Red River land,—called Red River land.
Q. But you say further up toward the head you have never been?
A. No sir. I don't know anything about that?

Cross-examined:

Q. What land is it up in your neighborhood that is selling
67 for $30.00 an acre?
A. My father has 120 acres where the Red bayou——
Q. It is not lake land. What lake land.
A. Between Red Bayou and the hills——
Q. Well but what lake is it?

A. Well I don't know. That is what they call clear lake up there. It has never been the bed of a lake but it is swampy low lands.

Q. What lake land up there is selling for that?

A. Well there is none that you call lake land but this gentleman asked me about the strata of the dirt there. It is what we call buck shot land.

Q. Your land up there is pretty well secured by levees is it not?

A. Only right lately. It is a very late thing. I suppose it is just finished this summer possibly.

Q. Well that is as to one gap. But you know there was a great deal of levee built up there and it had a great deal of effect upon the value of the lands there.

A. That levee wouldn't effect this land because the gap was right against it because the sloughs up there would empty right against this land.

Q. Scott's slough up there was closed sometime ago was it not?

A. I think not in two or three years.

Q. Well I know when it was closed. I was a member of the levee board along when it was closed. Mr. Pitts is it not a fact that the lands up there have very greatly risen in value by reason of these levees being built there prior to the closing of this last gap?

A. Well that might have something to do with it but still you remember we have not had an average overflow in the last ten years. That of course would enhance the value.

Q. You are comparing this land here with the land that can be protected by levees.

A. Well the levee was not in question. I was just comparing the dirt.

Q. Well if you are going to buy land do you not take into consideration whether it can be protected by levees or not?

A. Yes sir. Of course.

68 Q. If it was so situated that it was not possible or practicable to protect it with levees it would make a great difference in that land and land that can be protected by levees would it not?

A. Yes sir. Of course. If I was in the market for land I would take that into consideration.

Re-examined:

Q. Mr. Pitts, you have noticed the crops growing on this land along the R. R. have you?

A. Yes sir. For the last two or three years possibly.

Q. Indicate good land?

A. Yes sir.

Q. Like Red River land?

A. Yes sir. Like all Red River land I ever saw. The growth of weeds, cuckle burs and things of that kind in the crops shows that the land is very fertile.

JNO. R. JONES, upon being duly sworn, testified as follows:

Q. Where do you live?
A. In Shreveport.
Q. How long have you lived here?
A. Since 1865.
Q. What is your business or occupation?
A. Timber & lumber,—saw mill.
Q. What concern are you occupied with and what position do you occupy?
A. Victoria Lumber Co.—President.
Q. That Co. operates a saw mill and sash and door factory in this City?
A. It operates a saw mill outside of the City now.
Q. Have you had occasion to float timber by water courses a good deal to Shreveport?
A. Quite a good deal sir.
Q. Have you ever used Cross Lake for that purpose?
A. Yes sir.
Q. Where was the timber floated from and to?
69 A. From several places on Cross Lake. We used to float from Logan Bend and Hutto Bend and a point a little west from there, I forget now and some through Poplar bayou.
Q. Well in considerable quantities?
A. Anywhere from six to eight hundred sticks at a time and perhaps more than that.
Q. Well has the lake been used for Steam Boat purposes since you have been here?
A. Yes sir. Quite a good deal since I have been here. I think there were three instances of boats going from there to Jefferson. One large boat named Lizzie Hopkins came down from Jefferson through the lake. There was a little boat run by Capt. McClelland. I don't know when he did run it but he run it up to the time of his death.
Q. Well was it in the 80's?
A. Well between the 70's & 80's somewhere.
Q. Did any one succeed him after his death?
A. Yes sir. There was a little boat that went up there frequently after his death.
Q. You can't fix how late?
A. No sir.
Q. Was it used any for flat boating purposes?
A. Yes sir. Lots of flat boats.
Q. Who used them.
A. The latest man that used them to any extent was Dan Monroe. He used them up to his death. He made a good deal of money Flat boating in there. He would take freight up and bring wood down.
Q. Can you recollect the date of his death?
A. I don't believe I can but some of these lawyers can. He died in 1894.

Q. Your mill plant is situated on Cross Bayou?

A. What you call Cross Bayou. The Mill plant was on Cross Bayou sir.

Q. Cross Bayou is a stream from Cross Lake into Red River?

A. Yes sir.

Q. How far is it from Shreveport to where Cross Bayou runs out of Cross Lake?

A. It depends on where you *you* mean the lake to com-
70 mence. I don't think it is over a mile and a half or two miles and a half at the outside. Not more than two miles and a half at the outside by the meanderings of the bayou.

Q. How far is it from Shreveport to where the K. C. crosses on Cross Lake?

A. I would think it is about two a- a half to three miles.

Q. Well from the edge of the corporate limits, how far is it?

A. I don't think it is a mile from the corporate limits. Not more than a mile from Aesenal Hill. If the Corporation takes in West Shreveport it is not over a half mile. If you take in Cross Bayou at Arsenal Hill and run a line across there it is not more than a half a mile to where the R. R. crosses the lake.

Cross-examined:

Q. Mr. Jones the bed of that lake is considerably lower than the adjacent land,—of course you are acquainted with the bed of the lake are you not?

A. Yes sir.

Q. Is it not a fact that with an ordinary stage of water in the river the bed of that lake would be covered with water?

A. That is a difficult question. Let me ask you. That lake is an average of about a mile and a quarter wide and 16 to 17 miles long. Now then it has an oblong basement and the deepest part of that lake must be four or five miles above the K. C. R. R. Now let me see—When it crosses this canal to the lake rises—I used to know it exactly but I can't say that I do now. There must be somewhere from 16 to 20 feet of water on the gauge at Shreveport for the water to get up to the banks of the ditch or canal and in the meantime, higher up in the lake there will be 40 feet of water.

Q. Whenever the water stands from 16 to 20 feet in the river this land overflows?

A. Immediately above the K. C. road there will be ten feet of water there.

Q. How long since you was up there Mr. Jones?

A. I was up there on horse back three years ago. One
71 summer it was very dry and I took a notion to go up there and examine it three years ago.

Q. I want to ask you if from 16 to 20 feet at Shreveport is considered high water here?

A. No sir. That is considered an ordinary rise.

Q. Is not the high water mark at Shreveport 37 feet on the gauge?

A. No sir. 37 feet will bury you all. From 29 to 32.

Q. If it was at the high water mark at Shreveport what would be the condition of that entire lake bed?

A. Well the condition now wouldn't be like it was 7 or 8 years ago. No water can get in there now worth talking about excepting back water through Cross Bayou but enough water can get in there to enundate that lake. The lake used to have 8 or 9 outlets. It used to have an outlet at Soda Ferry. Ultimately it will drain dry land.

Q. What is there to prevent the water from backing into Cross Bayou?

A. Nothing sir.

Q. How wide is it?

A. I have never measured it sir but along opposite my mill it will be three hundred feet until you get along opposite Arsenal Hill and then it would be narrower.

Q. How deep was the water there in 1892 Mr. Jones? Was it not all covered with water in 1892?

A. Yes sir. Perhaps in the deepest portion of the lake there would be 20 to 24 feet of water. On the bank of the ditches I reckon there would be 4 to 8 feet. It depends upon how fast this land is rising. I remember the day when there would be 20 feet of water on the bank of the ditch and that land has been rising all the time and this sediment being deposited there.

Q. Would it not overflow now if we should have one? The bayou has no levee across it has it?

A. Of course there is nothing to prevent the water from running up Cross Bayou.

Q. No water can get in there only through Cross Bayou?

A. Formerly it could go through Red Bayou, Dooley
72 Bayou, Muffy Canal, 5 ditches known as line ditches between Arkansas & Louisiana,—all of these made outlets from Red River.

Q. How long has it been since they were leveed, do you know Mr. Jones?

A. I suppose as far back as 10 or 12 years ago they commenced leveeing those and the last one was leveed 4 or 5 years ago I think.

Re-examined:

Q. Counsel asked you if water was not deep in Cross Lake in 1892. I will ask you if it was not deep over most of the Red River Val-ey in 1892?

A. Oh yes sir.

Q. It covered most of the plantations didn't it?

A. Yes sir. It was from 8 to 16 feet over the bayou country. I took four skiffs and saved the settlers on Red Bayou. I saved some out of the Nolan plantation on the bayou. It was 8 feet high on the Dillon place and there was four feet of water on the levee.

Q. That land is now considered very valuable is it not?

A. Yes sir.

Q. Sold at 40 to 50 dollars per acre is it not?

A. I don't know what it is sold at.

A. The overflows were frequent. That was the second time I

have taken settlers out of the overflow in that country. Up to the time that they commenced leveeing those lakes would be always so full of water that I could depend on an overflow to supply my timbers and as soon as they commenced leveeing and let the water out of them, there never has been any water in them since and the mill became valueless. So these gentlemen owe me for the mill.

Q. There is a line of lakes along next to the hills on the edge of the Red River Valley between the Arkansas line and the City of Shreveport and these lakes were formerly filled with from 6 to 9 outlets in Red River on the upper end on the Parish near the Arkansas line and also when the river is high enough it would back up through Cross Bayou and now all these outlets have been cut off except Cross Bayou. That is a fact is it not?

A. Yes sir.

Q. Therefore instead of receiving water from about 10 out-
73 lets it receives it from only one now.

A. It only has one inlet backing up.

Q. When the water backs up to Cross Lake, does it or not back up into these other lakes and beyond?

A. No sir. The fall is too great. It couldn't get that high. It will check the flow of water in the bayou from Soda.

Q. Well all these lakes are lower?

A. Well it would be purely a question of how much fall there would be.

Recrossed:

Q. Mr. Jones you stated that the only source of getting water into Cross Lake now is through Cross Bayou. Now I will ask you whether or not there are a number of small streams running into that Lake from the hills and do they not drain a large territory into the basement of Cross Lake?

A. Yes sir. There is some. I think the drainage of Cross Lake is only about—I used to know exactly but I think it is something like 700 square miles I think that drains into the bayou. There is nothing to make water in Cross Lake.

Q. It simply gets this inland water from that many square miles?

A. Yes sir. That is all.

Q. It has Cross Bayou then to get Red River Water from?

A. Yes sir.

Q. Well the line of levees practically runs from the hills where the hills come near the river at the upper end of this Parish down to within a few miles above Shreveport?

A. I don't know how low down they come. They come below all of the outlets.

Re-examined:

Q. Well as a starting point they start at the hills do they not?

A. They start right at the hills where the hills draw near the river at the upper end of this Parish and continue along the river down toward those lakes on the river to within a few miles of Shreveport. It extends down passed these outlets except Cross Bayou.

Q. Cross Bayou is really the outlet of these lakes?
A. The outlet of Soda Lake and Cross Lake.

74 WALTER MONKHOUSE, upon being duly sworn, testified as follows:

Q. Where do you live?
A. Jewella. Littl̃e the other side.
Q. How long have you lived there?
A. About 20 years.
Q. How far are you from Cross Lake?
A. Right straight across about one mile.
Q. What is your business?
A. Market gardening and dairying.
Q. You are familiar with Cross Lake and have been during that time have you?
A. Yes sir.
Q. Do you know anything with reference to its being navigable since you have been out there?
A. It was navigable before I moved out to Jewella.
Q. State what you know about that?
A. They brought cotton from up there at Ecard landing where my wife was before I married her and from Flower's landing. The Ecard landing is about 16 miles going around, coming from there over to the Gates' place.
Q. By what plan did they haul cotton?
A. Flat boated it. Pulled it down with a little flat boat and Mr. B. Johnson, he hauled cotton from up there.
Q. With a steam boat?
A. I think he steam boated the logs down.
Q. Well I am asking you about the cotton.
A. That was Steam boated down.
Q. Well you have had occasion to go over these Cross Lake lands very frequently have you not?
A. Yes sir.
Q. What do you know about its value for farming purposes?
A. Well for farming purposes now or any other time if you want to take into consideration the subject of overflow or whether it was not subject to overflow, that would make a difference. I don't
75 know what light you want to look at it in.
Q. Well just as it is now. How long have you know- of it not having any water on it to interfere with cultivation?
A. Well the lake gets under water but as you go toward the hills the lands is in cultivation now and has been for four or five years. The land on the edge of the lake along is the nicest kind of ground for turnips and garden truck.
Q. About how many acres would you estimate in cultivation?
A. I couldn't estimate the number of acres. It is fenced up along the edge nearly out to the channel of the lake.
Q. What is the value of the land? What is it worth per acre?
A. About $25 or $30.00.
Q. How far is it from the City of Shreveport?

A. If you go out this way on the Rocky Point road it is not very far, not more than half a mile. If you go out by the K. C. shops it might be a half or three quarters of a mile.

Q. How far up have you noticed this Cross lake land?

A. 16 or 18 or 20 miles.

Q. Is there any great difference in it between here and the upper end as to its fertility?

A. Well there might be a little difference in the fertility of the land on the other side of the lake, but on this side as you come lower down the more deposit there is. It makes more deposit further down this way.

Q. You estimate it at $25 or $30.00 an acre?

A. Yes sir. It is the best gardening land in the world.

Q. You know that it is cultivated now in a good many places?

A. Yes sir. They raise cotton and corn on it.

Q. How many years have you noticed the crops there?

A. 6 or 8 years. It might be 8 years. Every year more.

Cross-examined:

Q. Mr. Monkhouse, the area that you have noticed there cultivated is upon that rim of the land next to the hills?

A. I don't understand what you mean by rim unless you mean coming around this way.

76 Q. That part of the lake bed next to the hills.

A. Yes sir. The nearer to the hills you go the shallower the water.

Q. What is the character of the people living along there and cultivating that land?

A. Some white families and some negro families.

Q. Which side of the K. C. road is the land referred to on?

A. Well they are working it on the right hand side going to Belcher.

Q. On the right hand side?

A. Yes sir.

Q. To the right? You say it is on the right hand side of the R. R. as it crosses?

A. That is on the lower side. On the lower side of the K. C. road,—left hand side. It is on the left hand side of the road going to Belcher. On the left hand side of the road. Going up to Belcher on the K. C. road and the land I am talking about is right in there by Wheelis Point on the left hand side between the road and the hills,—between Green Wood & Jewella.

Q. You now say it is on the left hand side. You change your statement.

A. If I change my statement I didn't mean to say on the right hand side. It is on the left hand side going up to Belcher.

Q. How does this land extend above the K. C. road,—this land in cultivation.

A. Do you mean how far above where the road leaves off?

Q. I mean just exactly what I asked you? How far above the K. C. road on the left hand side is the land in cultivation?

A. The road runs right along by the side of the land. The land that is worked is on the left hand side. The land ain't above it at all. It is on the side of it.

Q. How wide a strip is in cultivation?

A. On this side of the channel there is a strip perhaps between the channel of the lake and the land in cultivation, that is cultivated perhaps as wide as from here to the City Market. From 100 to 300 yards wide. In different places it varies.

77 Q. It is irregular width varying from 100 to 300 yards wide?

A. Yes sir.

Q. That is on the left hand side of the K. C. road going to Blanchard?

A. Yes sir.

Q. That is the strip you have been testifying about as being in cultivation?

A. Yes sir.

Q. That is the strip you have been testifying about as being worth $25.00 to $30.00 an acre?

A. Yes sir.

Q. This land on the K. C. road is the land you are so familiar with?

A. Yes sir. I am more familiar with that than the other.

Q. Is it not a fact that as you go up the road the land becomes poorer and poorer and becomes more apt to be covered with water than this on the K. C. road?—As you go up the land from the road.

A. It may be poorer but I don't think it is as likely to be covered with water?

Q. You have not been up there lately have you?

A. I have not been up there in twelve months. This strip of 100 to 300 yards is between the channel of the lake and the land that is cultivated.

Q. Well how much is in cultivation?

A. Perhaps between 400 & 500 acres. There is a good many families on it.

Q. How wide is the strip in cultivation on the west side of the K. C. road.

Q. Perhaps it is about a quarter of a mile in some places and in some places less.

Q. It ranges from 100 yards to a quarter of a mile wide?

A. I think so.

Q. That would be about your estimate?

A. Yes sir.

Q. That is a strip along the K. C. road, between the K. C. road and the channel of the lake as I believe you say?

A. No sir. Between the K. C. road and the hills. The channel is between that and the cultivated land.

78 Q. The channel is how wide?

A. The channel of the lake when the water is up in some places is about 10 feet wide and in some places about 30 or 40 feet.

Q. Do you mean to say that when the water is up it only covers 30 or 40 feet?

A. No sir. I mean the channel of the lake where the water always runs.

Q. How wide is it covered with water at the present time?

A. I don't know.

Q. How wide was it covered this last spring?

A. I couldn't tell you that.

Q. You went along there on the K. C. road didn't you?

A. Not this last spring.

Q. Was not that entire bottom there covered with water?

A. I couldn't tell you because I don't know.

Re-examined:

Q. You evidently didn't understand Mr. Wilkinson when you first testified. You said you lived how far from town?

A. 6 miles.

Q. Now this lake runs east and west doesn't it or N. E. & S. W.?

A. Well it runs a little northwest, yes sir.

Q. Now the land that you have seen in cultivation extends about how far up the lake towards Green Wood?

A. It goes up past Green Wood. All along the fringes of the lake. Up to Pine Island.

Q. You have had cattle over in there have you not?

A. Yes sir.

Q. That is how many miles from the K. C. road?

A. This land that I am talking about as cultivated, the further up the K. C. road you go, the further the road is from the land.

Q. Well how far west of the K. C. road does the land extend?

A. I couldn't tell you exactly. I expect a quarter of a mile.

Q. Your place is how far from the road.

A. About a mile and a half straight across.

Q. Well you have noticed it above that have you?

A. Yes sir.

79 Q. In cultivation?

A. Yes sir.

Q. Have you noticed the land at Flourhoy's crossing?

A. No sir. Not near Flournoy's crossing.

Q. Do you know where Mr. Phillips lives?

A. Yes sir.

Q. How far from that?

A. It is cultivated beyond his place.

Q. How far does he live from here?

A. About 10 miles.

Q. Well you can say you have seen it as high as 16 miles?

A. Yes sir.

H. F. DOLL, upon being duly sworn, testified as follows:

Q. How long have you resided in Shreveport?
A. Since 1867.
Q. You are familiar with Cross Lake are you not?
A. Yes sir.
Q. What has caused you to be familiar with it?
A. Well like a great many of the young men, hunting and fishing.
Q. You have hunted and fished on Cross Lake for how many years?
A. Well pretty much off and on since that time.
Q. Have you been up there for the last two or three years?
A. Yes sir. I was up there last winter.
Q. What do you consider the value of that land for farming purposes?
A. I consider it a safe investment, take it all the way through, at five dollars an acre.
Q. For the whole tract?
A. Yes sir. Some of it worth a good deal more and some not so much.
Q. You are one of the directors of the Commercial National Bank?
A. Yes sir.
Q. And you have retired from business I believe?
A. Yes sir.
Q. You were in the Mercantile business here for many years were you not?
80 A. Followed it for about 30 years.
Q. You are a member of the School Board too are you not?
A. Yes sir.

Cross-examined:

Q. Mr. Doll you duck hunt up there frequently too do you not?
A. Yes sir. I kill my share of them up there.
Q. How deep was the water when you was up there?
A. Where I killed them the water was not so deep. The cuckle burs was higher than my head and that prohibited me worse than the water. I drove up there with my wife and she sat in the buggy and watched me do it.
Q. There was water all through the lake bed?
A. No. We went up there opposite Wheeler's Point up there in the Cuckle burs there. That was the only thing that made it difficult to shoot.
Q. That land is covered with an ordinary stage of water is it not?
A. I don't think it is now.
Q. Well in the last four or five years it was practically covered in an ordinary stage of water was it not?
A. Well I don't know. I don't think the water has covered much of it since we had the big overflow. It has always had some water in it but it is very shallow.

Q. Do you own any real estate along this lake?
A. No sir.
Q. Do you own any alluvial lands?
A. No sir.
Q. Did you ever farm on any alluvial lands?
A. No sir.
Q. Then how do you know the value of these lands for agricultural purposes?
A. Well I imagine it is very valuable. Any land that will produce cuckle burs from three to five feet high without any cultivation, I would imagine it is pretty valuable land. I would like to own it. Wherever they grow, something else will grow.
Q. Cuckle burs grow in wet soil,—water don't effect them much, or do you know?
81 A. Well they won't grow where the water is on them.
Q. They grow very fast do they not?
A. Yes sir.
Q. You can make a cuckle bur crop where you can't make a cotton crop can't you?
A. They will always have a cuckle bur on them.
Q. Did you ever examine the land enough to know what was the nature of its subsoil?
Q. Did you ever examine it enough to know the thickness of the Red River deposit there?
A. No sir.
Q. It may be very thin or it may be very thick. You don't know?
A. No sir.
Q. Your familiarity with it is with that portion next to the K. C. crossing?
A. No sir. All up and down the lake.
Q. How far up and down?
A. Well I think from the K. C. crossing up to what is called the Blind Bayou is in cultivation now and Willow Point close to the R. R.
Q. Now the greatest basin of the lake is still west of that?
A. Yes sir.

Re-examined:

Q. How much do you estimate is in cultivation from what you saw?
A. Up there where Captain Phillips lives is very fine land and is in cultivation. I couldn't estimate it at all.
Q. Would you say several hundred acres of it?
A. Yes sir. It is cultivated on the edges of the lake.
Q. You say it is worth five dollars per acre to take the whole of it. Would you be willing to give that much for it?
A. Yes sir.
Q. You are able to pay for it?
A. I think I could raise enough to pay for it.
Q. You say you went up there hunting last spring?
A. Yes sir. Went without any boots.

Q. Well you say you went up there and went through the cuckle burs without any boots,—you mean hunting boots?

82 A. Yes sir. I didn't go out in the water where I would get my feet wet. I just remained where I was so my wife could sit there in the buggy and watch me shoot ducks.

Q. You didn't have on any hunting boots and didn't wade in any water?

A. No sir.

J. H. Hoss, upon being duly sworn, testified as follows:

Q. How far do you live from Shreveport?
A. About sixteen miles.
Q. Which direction?
A. It is west from here.
Q. How far from Cross Lake?
A. I live about two miles and a half.
Q. Then you are at the extreme western end of the lake?
A. Yes sir.
Q. What has been your occupation?
A. Farmer.
Q. How many years?
A. All my life.
Q. You are about how old now Mr. Hoss?
A. 45.
Q. You have lived close to Cross Lake all of these years?
A. Yes sir.
Q. You have observed then the upper end of the lake more closely than you have the lower end have you not?
A. Yes sir. I have seen that oftener. I have been over nearly all of the lake several times.
Q. What is your estimate as to the value of this 11,000 acres of land in controversy?
A. I think it would be well worth $5.00 an acre.
Q. Have you seen any of it in cultivation in the upper end?
A. Yes sir.
Q. How does it produce as compared with the hill lands?
A. Very well.

83 Q. Produce better?
A. Little better I think. Well there is some little farms on little knowls.
Q. The bottom lands of that lake—how do they produce?
A. I think after they have been broken for a year or two they will produce al- right.
Q. About on a par with the bottom lands of the river?
A. I think so.

Cross-examined:

Q. How much have you cultivated these lake lands?
A. I don't know that I have cultivated any.
Q. Then how have you derived your information?
A. I have seen them growing.

Q. Seen what growing.
A. Cotton growing.
Q. That other people cultivated up there by you?
A. Yes sir.
Q. They cultivated clear across the whole lake.
A. No. It is in an arm Captain.
Q. Oh! The Little arms.
A. Yes sir.
Q. That land has been enriched by the hill land washing down there and leaving its sediment is it not?
A. I don't know whether it has been enriched by the hill lands or not but I know it is on those little knowls.
Q. Then they are not in the bed of the lake?
A. Yes sir. It uses up the bed of the channel.
Q. Well where is it now?
A. Well it has got to be a pond there now.
Q. What converted it from a lake into a pond?
A. I reckon the levee that has been thrown up and it has been drained some way up there.
Q. Well you are 16 miles out yonder near the Texas line?
A. Yes sir.
Q. You don't pretend to tell me that you have got Red
84 River water up there?
A. I think so.
Q. What is the character of that soil up there that has been cultivated?
A. Well some parts of it is black and some parts of it is like the hills.
Q. Well it is not Red River land.
A. I don't know that that way up there is Red River land.
Q. Well that is what I am talking about.
A. No sir. Not Red River land up there.
Q. Well who is that is cultivating that land?
A. Well negroes mostly is cultivating the land.
Q. They are very small flats, small areas?
A. Small arms, yes sir.
Q. You have not cultivated any of it?
A. No sir.
Q. What did you say you thought that was worth?
A. I think it would be worth five dollars an acre to take it all in a body.
Q. Take all of the whole lake and all?
A. Yes sir.
Q. Do you know anything about this down here?
A. Yes sir. I have been there too.
Q. How long since you saw it?
A. I suppose three or four weeks ago.
Q. What part of it is covered with water so that you couldn't cultivate it? Have you made any estimate on that?
A. No sir. I can't tell you.
Q. What is that land up there that you saw these negroes cultivating worth?

A. I suppose it would be worth a dollar and a quarter or a dollar and a half an acre or something like that.

Q. Then why do you value this down here so much more highly?

A. Well as you come down further the land is better.

Q. What makes it better.

85 A. I suppose it is the water backed up through this bottom land.

Q. What is the occasion of your going over that land sufficiently frequent to keep informed as to its nature and quantity?

A. I was just passing down there on the R. R.

Q. What R. R.?

A. The K. C.

Q. Do you come down that way?

A. Sometimes,—yes sir.

Q. How far is it from your home to the R. R.? Do you go to Blanchford? That where you get on?

A. No sir. I came from my brother-in-law's down here,—Billy Noel's.

Q. You don't live there?

A. No sir.

Q. So you don't come down on the R. R. very frequently?

A. No sir.

Q. So that your observation is confined to the land along the C. K.?

A. Well I come down there through the lake horse back and once or twice in a wagon from my place.

Q. Have you come down through that way during the whole time you have been here?

A. Yes sir. I have been down there too hunting for your mules and things that strayed off that way.

Re-examined:

Q. You say you have come down there in your wagon?

A. Yes sir.

Q. From where to where?

A. From my place to Shreveport.

Q. Follow the lake all the way?

A. Yes sir. They have wagon roads up through the lake,—yes sir.

Q. You don't go through the water?

A. No sir.

Q. You don't call that a lake now as you once did. You call it a pond?

A. It is more of a pond,—yes sir.

Q. It has gotten so much smaller than it used to be?

A. Yes sir.

Q. The great bulk of what was once a lake is now uncovered by water?

86 A. Yes sir. That is it. I believe that lake was once just a forest of trees.

Q. Trees were once in it?

A. Yes sir. They have been cut out and died out.

Q. Well the bed of the water is much smaller now than it used to be?
A. Yes sir. They used to take the cotton there off the place I own.
Q. How long ago?
A. It has been a good many years ago. It was when I was a kid.

F. A. LEONARD, clerk D. C., upon being duly sworn, testified as follows:

Q. How long have you lived here?
A. 53 years.
Q. How long have you known Cross Lake?
A. All of that time.
Q. How far back can you remember its having been navigable?
A. It was navigated somewhere along about '50 & '51 with small boats.
Q. Did any one close to you have anything to do with its navigation?
A. Yes sir.
Q. Who?
A. My brother.
Q. He run *on* a boat up there?
A. Yes sir.

By the COURT:

Q. Mr. Leonard, what was the landing up there?
A. Well Page, Garlic and Beckam are three landings I have heard spoken of. I never went up on the boat to them.

Examination continued:

Q. Page lived near Green Wood didn't he?
A. Something near there I think.
Q. About how far is Page's land from here?
A. Something like 12 miles by the dirt road.
Q. By Cross Lake about how far?
A. About the same distance. Very little difference.
Q. You are Clerk of the Court?
A. Yes sir.
87 Q. Have been for a long time?
A. Yes sir.
Q. Expect to be the balance of your life?
A. Oh yes sir.
Q. Which of your brothers was it that was connected with a boat there?
A. E. S. Leonard.
Q. Was he Captain?
A. He was Clerk. He and the Captain leased these two boats and run them together. The Captain boarded at my father's house is the reason I remember it so well.
Q. Who was the Captain?

A. Summers.
Q. He was boarding at your father's house in the City?
A. Yes sir.

Cross-examined:

Q. How much water does it take on the gauge in Red River at Shreveport for the bed of the lake to be covered?
A. I don't know sir.
Q. Is it not a fact that it is covered with water when the gauge in the river at Shreveport is 17 or 18 feet?
A. I never noticed it. Never heard it discussed.
Q. The bed of Cross Lake is very low is it not?
A. Yes sir.
Q. Your brother, Mr. Albert Leonard, owns some land up there adjacent to this?
A. Yes sir.
Q. His is higher or lower than this?
A. Well on an average I think his is little higher.
Q. About when was the last boat you ever heard of going up this lake?
A. The last one I heard of was 1851 or 1853.
Q. Do you not know that this land,—this Cross Lake land in controversy in this suit is overflowed almost periodically from water from Red River and other water running in it?
88 A. Well in years past it would overflow regularly every year. It would get dry in the summer and fall and the water stood in ponds around in the lake.
Q. Has it not been only a few years ago since it was covered every year with water?
A. Yes sir. It has not been a great many years.
Q. Well the closing of these bayous up there a few years ago,—was not that sole cause of its not being covered with water now?
A. Very largely, yes sir.
Q. That originally was an old post-oak flat was it not? When you first knew it didn't it have the stumps of old oak trees there that had been destroyed or drowned out there by the water?
A. I can't say that I ever noticed them.
Q. What class of timber grows in the bed of this lake?
A. Nearly altogether willow as well as I remember it.
Q. Is there any cypress there?
A. Yes sir. I have seen some cypress there.
Q. Was there not a great deal of cypress there?
A. There are signs there of a great deal of cypress stumps.
Q. Has not River land,—alluvian lands advanced in value recently?
A. In the last five years, very much.
Q. Has there not been a more decided advance in the last two years?
A. Yes sir.

J. M. ROBINSON, upon being duly sworn, testified as follows:

Q. Where do you reside?
A. I live in Ward 8.
Q. Below Shreveport.
A. Yes sir.
Q. In Caddo Parish?
A. Yes sir.
Q. You are a member of the Levee Board?
A. Yes sir.
Q. Have been for a number of years?
A. Well I was for four years and then I was not for about four years. I am a member now.

89 Q. You were a member of the Levee Board in 1895 at the time that this deed was made to Mr. Jacobs?

A. Yes sir.
Q. Were you appointed on a committee to go and inspect the lake before the deed was made.
A. Yes sir.
Q. Did you go?
A. Yes sir.
Q. How did you go?
A. We went in a hack from here to some point on the lake and then got a skiff there and inspected the lake in a skiff.
Q. Who was with you?
A. Mr. Walter Crowder and Mr. Joe Beasly.
Q. How did you return?
A. We returned in the skiff to the foot of Texas street.
Q. You say you inspected the lake in a skiff?
A. Yes sir.
Q. Did you get out and go over any land at all?
A. We landed at several points on the edge of the bank. I think probably we landed three times.
Q. What sort of land was where you landed?
A. It was sorter on the hills.
Q. Did you see any of the lake lands that were not covered with water at the time?
A. I don't think that we did. Not that you could call alluvian lands.
Q. The whole lake they showed to you was under water?
A. Yes sir.
Q. About how much under water?
A. I would say it would average anywhere from 5 to 10 feet.
Q. At that time?
A. Yes sir. Except in the channel. It was probably deeper than that in the channel.
Q. Did you see any farms on the level land?
A. No sir. I don't remember seeing any.
Q. Then all they showed you was the lake covered with water?

90 A. Yes sir.
Q. That was all they showed you as being the lake?

A. Yes sir.
Q. It was the water?
A. Yes sir.
Q. Of considerable depth?
A. Yes sir.
Q. Did you have any trouble going anywhere that you undertook to go in the skiff?
A. No sir. None at all.
Q. They showed you no land uncovered by water?
A. No sir.
Q. You voted against the sale of this land?
A. Yes sir. Voted against it and made a minority report against the sale of the land.

Cross-examined:

Q. How wide was the lake where you all went?
A. I couldn't judge the lake properly because there were some stretches of timber in some portions of it. There would be an open space and then a little belt of timber and another open space.
Q. How wide was the lake at the widest point?
A. Really I have forgotten. I couldn't say.
Q. Was it as much as a mile wide?
A. I don't think there was any point that I remember seeing where there had been water that width. Though it has been quite a while and I didn't charge my memory with that.
Q. Mr. Beasly was the land agent of the Levee Board was he not?
A. Yes sir.
Q. Dr. Dickson was also a member of the Board?
A. Dr. Dickson was not with us in this inspection. Mr. Crowder was with us. He was the President of the Board.
Q. Mr. Beasly carried you all up there to show it to you?
A. Yes sir.
Q. About how high was the water on the gauge when you went up there if you remember?
A. To the best of my recollection it was something over 20 feet.

91 Q. Something over 20 feet?
A. Yes sir.

Q. Mr. Robinson, did the levee board intend that as a sale or as a donation?

Objected to by Counsel for plaintiff for the reason that they can not prove what the intention of the Levee Board was. This witness voted against the transaction and for the further reason that they have no right to prove by parol and by members of the Board what their purpose was in making the deed. They must let the facts and circumstances attending the sale show whether it was a donation in disguise or a sale.

Objection sustained. To which ruling the Counsel for defence except and reserve this in lieu of a bill of exceptions.

Q. Did the water when you went up there extend from hill to hill?

A. I think so sir. That was the impression that I had at the time.
Q. How far up the lake did you go?
A. I do not remember. We took in quite a portion of it though.
Q. How long were you in the boat in making the trip? Have you any idea?
A. We left Shreveport quite early in the morning,—about six o'clock and we landed back in Shreveport I think about three o'clock in the evening. Somewhere about there I think.
Q. Did you ever make any inspection or did your board ever make any inspection of lands they intended to sell or have sold except in this case?
A. In a few instances we have had committees of one or two appointed to examine lands where bids were made on them and we didn't know any thing about the lands.
Q. Before this sale had you ever had a committee to investigate lands?
A. No sir. Not up to that time.
Q. Was the land sold to Cooper and Leonard before or after this?
A. It was made shortly afterwards I think.
Q. When you started out on that tour of inspection in the company with the president of your Board and with Mr. Beasly,
92 who had been acting as your agent, you had received some offer for the purchase of this body had you not?
A. We had had a proposition,—yes sir.
Q. What was that proposition?
A. That proposition was from the Shreveport Rod & Gun Club.
Q. Well for how much?
A. I think it was for less than ten cents an acre. I don't remember now but I think it was for less money.
Q. Was it not five cents an acre?
A. I don't remember now. I am not positive.
Q. Well you didn't have Dr. Dickson, your third committee-man with you,—what did you and Mr. Crowder do when you returned?
A. We made no agreement immediately after our return but at the next meeting of our board we three consulted, Dr. Dickson had made the trip in the meantime, and we had a consultation before the board met and I told them that I was opposed to selling the land and thought that they were of the same opinion. We had agreed that Mr. Crowder should make the report and he reported that part of us were in favor of selling the land and part of us were opposed to it. Up to the time he made the report I didn't know that he was in favor of selling the land. I had nothing to do except to say that I objected to it and take a vote on it and the vote was four to three in favor of the sale.
Q. Who was it sent that written report that your committee made to the board?
A. I don't think our committee made any report in writing. I thought it was a verbal report. I am almost sure of that.
Q. Is it not a fact that you and Mr. Crowder on your return gave Mr. Beasly a note favoring the sale?
A. No sir.

Q. You did not sign any such report as that?

A. No sir. If I did I was asleep. No sir. I did not sign any such report as that. That is a mistake. He may have gotten a report from Mr. Crowder to that effect but not with my consent.

Q. Well what was your objection to the sale of that land at the time?

93 A. I did not think that the amount of money that the land would put into the treasury of the Levee Board was sufficient to justify our turning loose such a quantity of real estate at the price. My idea was that we could hold it rather than turn it loose at a nominal offer.

Q. The offer that was made to you before you went on that trip of inspection was five cents an acre?

A. That is my recollection.

Q. Did you and Mr. Crowder consult there on your trip or after you returned about any conclusion you had reached?

A. We had a short consultation just a few minutes previous to the meeting of our Levee Board on the morning which the proposition of the sale came up for final settlement. My recollection is that Dr. Dickson and Mr. Crowder represented that the Gun Club had raised the price to 10¢ an acre and that we ought to sell it. I objected to that and thought that I had won them around to my way of thinking before the meeting of the board.

Q. Did you make any proposition to these gentlemen as to what you would take?

A. No sir.

Q. Did you afterwards agree to the sale that was made to Leonard & Cooper?

A. No sir I voted against it.

Q. How did you vote on the sale of the land to Dillon?

A. I voted yes.

Q. That land was sold at how much?

A. 25¢ an acre I think it was. It is my recollection that that was our first sale of land. I saw our error right away. I would like to explain that the price fixed on that land was decided upon by resolution of the board authorizing the land agent to sell land at a certain price, fixing the price for small lands at a dollar and a quarter or a dollar and a half an acre and the price decreased as the quantity of land increased and up to five thousand acres they fixed the price at 25¢ an acre. The idea then was to work the land off at that nominal price and get them on the tax rolls so as to get some revenue.

94 That was my idea of selling the land but I changed my mind after the sale was made.

Q. Well did not the Board still hold on to that view in the sale of this land,—that it would be to their interest to get this land off so that it would be a revenue to them in the way of taxes?

Objected to by Counsel for the plaintiff for the reason that they have no right to prove motive of the board, by this witness, in making the deed to the defendants.

Objection overruled. To which ruling the Counsel for the defence except and reserve this in lieu of a bill of exceptions.

A. I changed my mind. The balance of the board continued in their old policy.

Q. Well your committee that were appointed to inspect the premises were authorized to consum-ate the transaction were they not?

A. I rather think—I don't remember but it is my impression that possibly——

Q. Well didn't your committee say that it was best to refer it to the board?

A. Yes sir.

Q. And so the board took action in the matter?

A. Yes sir.

Re-examined:

Q. Mr. Robinson, what have you been selling lands at for the last two years?

Objected to by the Counsel for the defence for the reason that the deeds themselves are the best evidence of what they were sold for.

Objection overruled. To which ruling of the Court, the counsel for defendants except and reserve this in lieu of a bill of exceptions.

A. Our sales average something like ten dollars an acre.

Q. You have sold a very considerable quantity?

95 A. Yes sir.

Q. Could you give any idea of the quantity?

A. No sir. I don't think I could.

Q. Have you made as many as 50 or 100 sales?

A. I can't say.

Q. You have made a great many?

A. Yes sir. Still hold a lot of it.

Q. From how low to how high does it run?

A. From five to $15.00 I think. Possibly we may have made some that run as high as $17 to $18.00 but not but one or two.

Q. After the Legislature passed an act exempting lands that were not susceptible to protection from the levees, exempting them from taxation,—levee taxes, did your board *did your board* call upon the State Engineer to designate for the board what lands were exempt in that way?

A. Yes sir.

Q. I suppose you don't know whether those lands were exempt or not?

A. No sir. I suppose they are. In fact I know they are.

Q. They do not then pay levee taxes?

A. No sir.

Q. They are exempt under act of 1894 exempting lands that are not protected or susceptible of protection by the levees, from levee taxes?

A. Yes sir.

Q. Have they been so designated by the Board of engineers?

A. Yes sir.

Dr. W. L. DICKSON, upon being duly sworn, testified as follows:

Q. Were you a member of the Caddo Levee Board in '95 at the time this sale was made?

A. Yes sir.

Q. Were you one of the committee appointed to go and inspect Cross Lake?

A. Yes sir.

Q. Did you go with Mr. Robertson and Mr. Crowder or on a separate expedition?

96 A. I went with Mr. Sam Enders and my brother S. A. Dickson.

Q. We had a hack from Shreveport up where the lake commenced and then had a skiff.

Q. How did you return?

A. We rode over the lake they wanted to buy and then back *back* to the hack and came back to Shreveport.

Q. Who guided you and showed you over the lake?

A. Mr. Enbers.

Q. What did he show you?

A. He showed me the body of water and said he wanted to buy that for hunting and fishing purposes.

Q. Did he show you any land?

A. No sir.

Q. Just showed you the body of water?

A. Yes sir.

Q. About how did the depth of that water range?

A. Well you couldn't tell anything about it except with the oar. You couldn't touch the bottom in some places at all with the oar. Some places you could with the length of the oar.

Q. Well just give us some idea. You say some places were shallow?

A. Yes sir. Some places. I suppose it would range from 5 to 20 feet.

Q. He showed you nothing except this body of water?

A. Nothing that he wanted to buy except the body of water.

Q. For hunting and fishing purposes?

A. I know he said hunting and I think he said fishing. He wanted to have a club house up there and make a nice resort for hunters and wanted to keep the people out that hunted ducks for market and keep them from killing out the ducks.

Q. Did you see any lands along — that you noticed?

A. No sir. I didn't see any lands that I then supposed to belong to this tract. I didn't see any lands that I supposed were connected with this tract at all. Didn't have any idea that there was any lands connected with it.

Q. Did you see any farms that you asked about?

A. No sir. I don't remember seeing any farms at all except some coming from this place to Shreveport.

97 Cross-examined:

Q. How long did you spend there Dr.?

A. I don't know sir but I suppose two hours may be. I don't remember exactly but about that time I reckon.

Q. You knew that they wanted to buy the bed of Cross Lake?

A. I knew they wanted to buy that lake and supposed the name of it was Cross Lake. I never had been up there before and was real-y ignorant of the location of Cross Lake.

Q. Well the whole bed of the lake was covered with water?

A. All I saw sir was covered with water. Yes sir. I don't think we went entirely across it. We didn't see any hills on the opposite side. We were in a skiff and there came up a storm and I don't suppose we made as much examination as we should have made. It seemed to me more like a stream of water. I suppose the deepest part was the bed of the lake.

Q. You got into the boat on this side at the hill?

A. Yes sir. At the hill of sloping place there.

Q. How far did you go towards going across it? Did you go as much as — mile?

A. No sir. I don't think we went more than half a mile.

Q. You didn't purport to have gone all over it?

A. No sir.

Q. Mr. Enders didn't tell you you had gone all over it?

A. No sir. He did not.

Q. The storm came up and your investigation was cut short?

A. When I went up there I just supposed I was going to see a lake. I didn't look for any land. I understood they were going to buy the lake for hunting purposes. I did not look for any land. Mr. Robinson and Mr. Crowder had already been up there.

Q. You don't pretend to say that Mr. Enders miss-lead or misrepresented matters to you in any way?

A. I did think so at one time Captain.

Q. You don't now?

A. Well I don't know about that Captain.

Q. I know you will remember this when I recall it. I put this question to you. "Were you impressed at the time or have you since been impressed that Mr. Enders was trying to deceive you
98 about that land?"

"A. No sir. I think he was honest in what he told me. I don't think he knew and I think so still."

A. Well I will go on and explain why I thought at one time that he had misrepresented it. After the sale was made there was a great many parties in Shreveport came to me and told me that there was a good deal of little farms sold with that land and when I was told that by these parties I thought that Mr. Enders had misrepresented it by putting all these farm lands in with this lake land. The suit was brought to annul the sale on account of insufficiency of price.

Q. Don't you know that you came to the conclusion that you had been imposed—upon by what was told you about other lands,—hill lands and that you found out afterwards that nothing was in the lake bed at all?

A. That is what I have been told about it and as I said before I knew very little about it and never saw it except at that one time.

Q. You agreed to sell it did you?

A. Yes sir.

Q. You moved this resolution instructing the Attorney to bring the suit to rescind because you had been made to believe that a whole lot of high dry land had been unwittingly embraced in the deed?

A. Yes sir. I thought that some high and dry land had been sold and on that account I made the resolution.

Q. You thought that there had been land included in it that you didn't own?

A. Yes sir.

Q. Where did Dr. Allen tell you that land was?

A. He said on the edge of the lake around up there. He didn't say in any specified place. I think Mr. Stoner said the same thing, but I don't remember positive about that. There was several others.

Q. Did you not know that you sold all between the edge of the lake and the traverse line?

A. I know that we sold a lot of land that we never intended to sell in that sale.

Q. Well did you not find out afterwards on the trial of the case that that land that you had been made to believe was included
99 in the sale was not included in the sale?

A. Yes sir. There was a good deal of it that I was made to think was included that was not included.

Q. That was the reason that you moved the resolution to rescind the sale?

A. Yes sir.

Q. You agreed with Mr. Crowder on the price that you were to take for this land?

A. Yes sir. 10¢ an acre. I don't remember of having heard of that 5¢ offer.

Q. You agreed to take 10¢?

A. Yes sir. 10¢ an acre.

Re-examined:

Q. How did you find out that these farms were not in the lake?

A. During the trial these parties that I got my information from failed to prove that these farms were in this land.

Q. There is nothing in the testimony to that effect?

A. Well that was my understanding. I don't think I was present at the trial. I was not at the trial as Captain Bell knows. He took my evidence.

Q. You don't know whether they were included in the sale or not?

A. No sir. Not of my own knowledge. I just heard it at the time. I was not here during the trial. I was told at first by Dr. Allen and others that they were included and I heard after the trial that it was not true, that they were not included.

Q. You don't know whether there was anything of that kind proven or not?

A. No sir. I don't know. I heard it.

Q. Now let me read a question to you and your answer. "Now when you were on this lake with Mr. Enders and saw these farms did he say anything about whether that was embraced in the land or not? (A.) He said that it was not. He gave me the names of several parties who owned the land and if I remember correctly there was a little island which he said that Mr. Phillips owned. I asked particularly because I did not want to sell any of the land of the board." That is read from your testimony given in Mr.
100 Wise's office. Is that correct?

A. I suppose it was. I don't remember now whether I saw any farms or not. I suppose it being nearer the date when that testimony was taken it is more apt to be correct than my memory of it now. I know very well that Enders stated positively that he was buying water and not land. I know that positively.

Q. Now I will read you another question. "A day or two after that I met Mr. Enders and he said since we were there I heard you owned the land. He said of course I didn't know we were buying the land but if it is valuable to us of course we want it if we got it."

A. Yes sir. He said that.

Q. He seemed to think then that they got it?

A. He seemed to think that there was some land that didn't amount to much.

Q. Next question. "If you had known the value of the land then as you afterwards learned it from Mr. Enders' statement, what would have been the result? (A.) I would not have sold it to the Gun Club or anybody else at that price." Is that correct?

A. Yes sir. If I had known there was land connected with it I would not have sold it for 10¢ an acre to anybody.

Offered in evidence by Counsel for plaintiffs the charter of the Shreveport Gun Club, recorded in book 15, page 504 of the conveyances in the Clerk's office of date Aug. 28th, 1895, with leave to substitute a certified copy.

Same is filed in evidence and marked "B."

Offered in evidence by Counsel for plaintiff the Charter of the Cross Lake shooting & Fishing Club of date — day of ——, 1896, recorded in book 17, page 269 of Conveyances in the Clerk's office.

Same is filed in evidence and marked "Q."

Plaintiff rests.

101 *Evidence for Defence.*

Col. S. J. WARD, upon being duly sworn, testified as follows:

Q. You are Sheriff and Tax Collector of this Parish?

A. Yes sir.

Q. Have you examined the Assessment rolls to see whether the property in controversy here was assessed to the Shreveport Gun Club or any one?

A. Yes sir.

Q. To whom was it assessed?

A. To the Cross Lake Fishing & Gun Club I think it the title of it.

Q. Cross Lake Fishing & Hunting Club?
A. Yes sir. Hunting Club.
Q. It has been so assessed for what years.
A. I didn't examine it any further back than last year. I think it had been carrying some other name,—Gun Club name previous to that time possibly. It has been assessed to one or the other of the Gun Clubs since the title was passed.
Q. The taxes have all been paid?
A. Yes sir.
Q. What was the valuation placed on it for assessment?
A. Three thousand dollars, the last assessment.

Cross-examined:

Q. The assessments are not unusually up to the cash value of the property in this Country?
A. No sir. About 60%.
Q. Are they in all cases up to 60%?
A. No sir.
Q. It pays no levee taxes?
A. No sir.
Q. Never has paid any?
A. No sir.

Offered in evidence certified copy of the U. S. map of Cross Lake showing lands in Township 18, Range 14, with leave to sub-
102 stitute a copy?

Same is filed in evidence and marked "4."

Offered in evidence the entire record, including the evidence, in the case of the Shreveport Rod & Gun Club *vs.* Board of Commissioner- of the Caddo Levee District *et al.*, No. 5046 on the docket of this Court and 12170 in the Supreme Court.

Filed in evidence with leave to use the record in the Supreme Court, including the evidence offered in the case. Marked "5."

Offered in evidence certified copy of act of sale from the Caddo Levee Board to Leonard & Cooper, as recorded in book 16, page 193 of the Conveyances of Caddo Parish, with all the endorsements thereon.

Some is filed in evidence and marked "6."

Offered in evidence act of sale from the Caddo Levee Board to Rainey Carter as recorded in book 15 page 306, of the Conveyance records of Caddo Parish.

Same is filed in evidence and marked "7."

Offered in evidence act of sale from the Caddo Levee Board to W. F. Dillon, as recorded in book 17, page 412 of the Conveyances of Caddo Parish.

Same is filed in evidence and marked "8."

Offered in evidence deed of transfer from the State to the Caddo Levee Board as recorded in book 14, page 696 of Conveyance records.

Same is filed in evidence and marked "9."

J. H. LEVY, upon being duly sworn, testified as follows:

Q. Mr. Levy, you are deputy Clerk?
A. Yes sir.
Q. Did you make an examination of the records in reference to this land in dispute with me this morning?
103 A. Yes sir.
Q. Up to the time of the sales to Rainey Carter, Leonard & Cooper & W. F. Dillon, had there been any other certificate of title from the State to the Levee Board, other than that recorded in book 14, page 696?
A. Only one more. It was a tax title to the McHenry land. That was the only one recorded on page 696 of book 14.

A. H. LEONARD, upon being duly sworn, testified as follows:

Q. Mr. Leonard you are an attorney here?
A. Yes sir.
Q. I believe you and Mr. Cooper bought some of the Cross Lake land?
A. Well we didn't buy any of the Cross Lake land. We bought what is called Cross Lake lands, yes sir.
Q. You are one of the purchasers in the title from the Levee Board to Leonard & Cooper?
A. Yes sir.
Q. How long have you known Cross Lake or what is called Cross Lake?
A. Since 1849. Fifty odd years I guess.
Q. What is your age?
A. Sixty three. Will be next month.
Q. You were then how old in 1849?
A. I was 10 years old. Was I not? I was born in 1839.
Q. What have you to say about the conditions of Cross Lake in '49 & '50?
A. I could say a good deal. What is it you want to know.
Q. Well about the quantity of water on the land, whether boats navigated it or not and if so at what time?
A. Boats navigated it in the Spring of 1850 because I was on a boat that went up there.
Q. What time of the year was that Mr. Leonard?
A. It was in the spring.
Q. What have you to say about the stage of the water or water remaining there of a navigable character during the entire year or did it dry up?
104 A. What is it you want me to give information about? Do you want to know what is the character of the lands near Cross Lake?
Q. Yes sir.
A. Well in 1849 we had a great overflow. The largest ever known they say and of course the water was everywhere over the Red River Valley from hills to hills and at that time the lands in controversy was a body of water. A great deal of the territory which goes under

the name of Cross Lake is not Cross Lake proper. The bed of Cross Lake proper constitutes a greater part of the land in controversy and that was navigable water in 1849.

Q. About that time what have you to say about the custom of it drying up in the summer time when the water went down?

A. Perhaps I had better state it in my own way. What is called Cross Lake, and that applys to all of the lakes from here to Caddo Lake, Soda Lake, Ferry Lake, Clear Lake, were overflowed in consequence of a raft in Red River. The raft in Red River was such that no water could get through it and all of the waters that came down Red River were forced over the west bank and filled up all of the low places. Cross Lake for instance was once a post oak flat and I have seen the post oak stumps to those trees in 1849. When this ditch was cut the stage of the water in the lake depended entirely upon the stage of the water in the river. When the stage of the water was high the water was forced back up Cross Bayou into these lakes or low lands and at certain stages of the water in Red River all of that territory up there was covered with water and when the water in the river got low of course the waters run down and it was nearly all of it dry.

Q. What stage of the water on the gauge here at Shreveport was usually necessary to overflow that territory?

A. Well I should think that the lake bed proper,—what you see marked on the map there as old bed of Cross Lake, I should think that from 15 to 17 feet of water on the gauge at Shreveport will cover all of that.

Q. Was it covered during the rise this spring Mr. Leonard or do you know?

105 A. Well it was a lake again this year but that was caused from rain water. We had an excessive rain fall here about 6 weeks ago or something like that was it not? And Red River I think got up to 17 feet this year. That is my recollection. While I was not up there while the water was at that stage, I suppose that a good deal of the land in controversy was under water.

Q. Well this Leonard & Cooper land is adjacent to the land in controversy is it not?

A. Yes sir. It joins on the lower end,—east of us.

Q. I believe that when the water was up to certain stages in Red River it run over the land in controversy?

A. Yes sir. It was called a lake. It was caused by the water going from Red River. Otherwise there would be no lake there.

Q. Now in the overflow of 1849 and these various overflows, is it not a fact that you could run a steam boat on the low lands of Red River?

A. If it was not for the trees you could. In 1849 you could have run a steam boat from hill to hill as far as the depth of the water was concerned.

Q. Does this lake as a general thing dry up in the summer?

A. Yes. I have known the lake to be entirely dry many times.

Q. It was only then in high water or when the water reached a very high stage in Red River that it was navigable by steam boat?

A. Yes sir. The water was at a high stage in Red River when it was navigable by steam boat.

Q. Of your knowledge has it been navigable since 1851?

A. No sir. It has not. There was a boat that run away from its pilot and came down through what is known as Tim Mooring Pass and came out this ditch to Shreveport but no boat went up there purposely since 1851.

Q. What is the character of the soil of this lake?

A. Well this lake, as I told you, was once a very low land, probably a post oak flat and there is an alluvial deposit over it of greater or less depth. Very little deposit at the upper end and very little on these mounds.

106

Q. The deposit is greater when you get nearer to Shreveport?

A. Much greater.

Q. Your land is between this land and the river at Shreveport?

A. Yes sir.

Q. You are acquainted with the body of land you bought of course and acquainted with this body of land?

A. Yes sir.

Q. You know something about the relative values of Red River lands I suppose. You own a considerable quantity of Red River land do you not?

A. Yes sir.

Q. What is the relative value at the present time of the land that you and Cooper bought as compared with the land in controversy?

A. Well there is no comparison with the exception of several hundred acres of our land which joins this land. The land which Mr. Cooper and I own is worth far more than the land in controversy.

Q. How many times as much would you estimate it?

A. Well it is rather hard to estimate land that way but our land is worth 8 *of* 10 times as much as the other land.

Q. 8 *of* 10 times as much as this?

A. Yes sir.

Q. Do you know the land that W. F. Dillon bought?

A. Yes sir.

Q. How does that land at the present time compare with the land in controversy?

A. Far better,—the Dillon land is.

Q. Is it lower or higher than the land in controversy?

A. Higher.

Q. The Leonard & Cooper land is likewise higher?

A. Much higher.

Q. Can the Dillon land be protected by Levees or is it protected by levees?

A. Well I can state that there is a portion of his land that I don't see how it can be protected at all by levees neither can the Cross Lake land be protected by Levees. It can be protected by levees except in such cases as makes it impractical.

107 Q. Well you say that the Dillon land is more valuable than the land in controversy? Is it as much as 3 to 5 times more valuable?

A. It is more than five times I should think.

Q. This land acquired by Rainey Carter,—do you know that land?

A. Yes sir. I have a general knowledge of it.

Q. What have you to say as to its relative value now compared with the land in controversy?

A. Well the greater portion of it is much more valuable.

Q. Worth twice as much?

A. Oh yes. More than that.

Q. More than twice as much as the land in controversy?

A. Yes sir. My understanding is that a portion of that land sold to Rainey Carter was subsequently acquired by Glassel. That was very valuable land. The greater part of the land bought by Carter was fine land.

Q. What about the condition of the market with reference to Red River land? Has it recently had an unprecidented rise in value?

A. It has had a phenominal rise in the last five years. I can illustrate that better by say- that lands that I owned that I couldn't sell at any price, I had sold portions of it at the rate of 10 dollars per acre. It couldn't have been sold five years ago at all.

Q. Did you buy some land at 15¢ an acre at a succession sale here that you afterwards sold at $20.00 an acre?

A. Well I bought a good deal of land at the succession sale of J. R. J. Daniels. I suppose that cost me from 75¢ to $1.00 per acre is my recollection. That land was bought by J. S. Ashton and myself partly in his name and partly in mine. We bought it together and after his death his half interest was sold and I bought it for about six hundred and odd dollars I think at the succession sale. That was at the rate of about 12 or 15¢ per acre and some of that land I sold about two years and a half ago for $20.00 an acre. I will explain that one reason for the great rise in Red River lands is the construction of the levees which has kept the water out of the swamp and that refers to these lands that you call Cross Lake lands and all of those other lakes. No water now from Red River
108 gets into the swamp above Shreveport except such as may back up thro- 12 Mile Bayou & Cross Bayou.

Cross-examined:

Q. You and Mr. Cooper paid cash for the land you bought?

A. Yes sir.

Q. You didn't deposit the money in the bank with a string to it?

A. No sir. We paid cash. We bought from the Levee Board.

Q. Yes, and paid cash?

A. Yes sir.

Q. That Ashton sale you spoke of was something like 30 years ago was it not? He died in 1873?

A. Well my recollection is it was in 1876 or 1877. The sale was after his death. The sale was in 1877 or perhaps 1878.

Q. Near 25 years ago?
A. Yes sir.
Q. Don't Red River in the summer get very low so as to practically stop navigation in the summer?
A. Frequently. I have seen it so low that it couldn't be navigated with a skiff on account of its being so low.
Q. Did not people sometimes have to haul their freight, supplies from the mouth of the river?
A. I have known people to have to haul their supplies from the mouth of the river and from Lake Providence on the Mississippi River.
Q. Do you know that any boats have gone up Cross Lake since 1849?
A. I say that none have gone within my knowledge. I don't know much about it since 1878. From 1849 to 1878 I don't think any boat could have gone up there without my knowing it except during the period of the war.
Q. Do you know about Captain McClelland running a boat through here during the 70's?
A. No sir.
Q. Did you know him?
A. Knew him well—yes sir. He may have carried a boat up there. He could have done it but it was not nevigated for the
109 purpose of navigation. There is no doubt about its being navigable if that is what you are getting at. He could have carried a boat up there.
Q. Your recollection couldn't go back much beyond 1849 could it?
A. Yes sir.
Q. Can it go back beyond 1849?
A. Yes sir. Easy enough.
Q. How far back can you go?
A. Well back to 1844 easy enough.
Q. That is about as far back as you can remember?
A. Yes sir.
Q. Of course you don't know anything about what the conditions were before that time?
A. That don't follow at all.
Q. When was the raft gotten out of Red River?
A. In '73,—the greater portion of it.
Q. How far above Shreveport was the raft in Red River?
A. It commenced a few miles above town and extended some 25 or 30 miles or more.
Q. It was the existence of that raft that caused the water to seek an outlet into these lakes above?
A. Yes sir. Forced it.
Q. There were some natural outlets between the river above the raft were there not?
A. Yes sir.
Q. What were they?
A. Bayous making out of the river on the west.
Q. Emptying into these lakes?
A. Yes sir.

Q. Since the removal of the raft there was no- much water to go through these outlets into the lakes from Red River was there?

A. Yes sir. There was a great deal. But the removal of the raft of course reopened the bed of the river.

Q. Well it would have to be a very high stage of water to carry it into the lakes?

A. Yes sir.

110 Q. You say that the lands that you and Mr. Cooper bought from the Levee Board are five times as valuable as the Cross Lake lands now involved in this controversy?

A. I think so. I don't think there is much comparison.

Q. Didn't you say 8 or 10 times as valuable?

A. I think they are. I don't think there is any comparison between the lands at all.

Q. Do you mean to say that the Leonard & Cooper lands are so much more valuable than the lands in controversy that there is no comparison at all?

A. Very little.

Q. You have your lands in cultivation up there have you not?

A. A portion of it.

Q. You bought some four or five thousand acres?

A. Yes sir.

Q. How much of it have you in cultivation?

A. I think about 81500.00 acres.

Q. Is there any of this other land in cultivation,—this land in controversy?

A. Some of it is. I don't know what portion of it.

Q. What is the value of the Leonard & Cooper land you have in cultivation up there now?

A. Well I think that a fair rental value of it after it is put in a good state of cultivation would be about four dollars an acre.

Q. About four dollars an acre?

A. Yes sir.

Re-examined:

Q. What about the character of the lands next to the K. C. road where the K. C. road crosses this lake compared with the lands further up?

A. Well the further up the lake you go the less deposit there is.

Q. The less valuable the lands become as I understand.

A. Yes sir.

W. B. JACOBS, upon being duly sworn, testified as follows:

Q. Mr. Jacobs you were one of the original purchasers of
111 the land in controversy?

A. Yes sir.

Q. You bought it I believe and then sold it to the Gun Club?

A. Yes sir.

Q. You and others?

A. The records will show that a number of us bought together.

Q. A Committee was appointed by the Board to go up there and examine these lands?

A. Yes sir.

Q. The minutes show Aug. 6th 1895?

A. Yes sir.

Q. Do you know what date Mr. Robinson and Mr. Crowder went up there?

A. Mr. Robinson and Mr. Crowder and as well as I remember Mr. Beasly and Mr. Enders I think, went up the following day.

Q. Which would have been the 7th of Aug?

A. Aug. 7th Dr. Dickson stated that he had an urgent call somewhere and would go a few days later but couldn't go with the committee at that time.

In this connection Counsel for plaintiff offers in evidence Signal Service Bureau showing the height of water in Red River.

Same is filed in evidence and marked "R."

Q. The deed was made to you and your associates on Aug. 20th?

A. Yes sir. At the next meeting of the Levee Board. I believe it is Aug. 20th.

Offered in evidence by defence certified copy of deed from Levee Board to W. B. Jacobs and others.

Same is filed in evidence and marked "10."

Q. The consideration stipulated in that deed was $1,100.00. How was that paid?

A. Checks were given for it at the time the deed was made and during the night some controversy was started in the matter
112 through Mr. Youree as explained subsequently and the Secretary of the Board was instructed not to collect the checks.

Q. When was he instructed not to collect them do you know? When did you find out that he was instructed not to collect them?

A. As well as I remember the following morning because the controversy was started that night by Mr. Youree. He wanted them as I understand for water-works purposes and he was made believe that the then purchasers wanted them for water works purposes.

Q. What did you do then with reference to taking up the checks?

A. I took the money and went to the Secretary of the Levee Board and offered him the money and he declined to receive it and said that he had been instructed not to do anything in the matter at all.

Q. This suit of the Rod & Gun Club followed soon after that I believe?

A. Some time after that. I don't remember the lapse of time.

Q. What became of the checks. Pending that suit did Mr. Kerley retain the checks?

A. I think they were subsequently surrendered when they were cashed and the money deposited under resolution of the Levee Commissioners.

Q. That was after the termination of that suit?

A. I think so.

Q. Mr. Jacobs have you ever been before the Levee Board either

by yourself or with your Att'y and requested them to take some steps or to allow the use of their names that you might take steps to perfect your title?

A. Repeatedly. I asked them to take the necessary steps and offered to pay all expenses that the Levee Board might be put to in perfecting or completing the title.

Q. That money was deposited in the First National Bank of which you are president?

A. Yes sir.

Q. By the Secretary of the Levee Board?

A. Yes sir. The certificate is in existence for it.

Q. Why was this money deposited in the bank as it was,
113 subject to the order of the Levee Board and not paid over to them absolutely?

A. As well as I remember the lawyers raised the question right there in discussion with the Levee Board. As they had been contesting the title and wouldn't perfect it they had a right under the law to ask them for a deposit of the money or bond for removing any defects about the title.

Q. Who was that attorney?

A. I think it was Captain Bell. I don't remember now. At different times I have had different Attorneys.

Q. Which course did the Board pursue?

A. They deposited the money subject to their taking the necessary steps to complete.

Q. Now before this suit of the Shreveport Rod & Gun Club against the Board of Commissioners of the Caddo Levee District was filed They held these checks?

A. Yes sir.

Q. They could have at all times collected these checks?

A. At any time.

Q. Did you offer them the money to pay them?

A. I went and offered the money at one time to the Secretary and he told me he had orders not to cash the checks or do anything.

Q. Well subsequently, about December of last year or Jan. of this year, You all offered the Levee Board $3,500.00 I believe.

A. We offered $2,500.00.

Q. For what purpose?

A. It has been clearly intimated that the Levee Board had the thing tied up where it would be very expensive and costly and a good deal — time and expense in law suits etc. and the intimation was thrown out to us that if we would put up something additional they would remove all bars and perfect the title, take all the necessary steps to perfect the title and then we offered this $2,500 if they would lend their assistance and do everything they could to take the necessary steps to perfect the title.

Q. What was the result of that offer?

114 A. They went into executive session there. Everybody was asked to leave the room and probably after a half hour or so we were called back in there and they stated that they had considered the matter and if we would change it from twenty five

to thirty five hundred they would do it. They asked us to make the written proposition and we scratched out twenty five and wrote thirty five and it was so accepted.

Q. When was that money to be paid?

A. Whenever the titles were perfected and they were to be perfected under the approval of Captain T. F. Bell and Mr. Dave Land.

Q. Mr. Dave Land was attorney for the Levee Board?

A. Yes sir. Whenever these attorneys said that the title was perfected that was an acceptance of it.

Q. Do you know what effort — the board immediately after that offer was made and accepted?

A. I think at the same session they passed a resolution instructing the president to make application to have these lands listed and take the necessary steps to perfect the title. I think that was done at the same session after this agreement was signed and accepted.

Cross-examined:

Q. Referring to the time when the first checks were given, how long was it after that when you went and offered the money for the checks?

A. A few days as well as I remember or the next day. It may have been the day after. It was immediately after the question of this controversy came up.

Q. You heard that night that some question had been raised?

A. I said there was from what I heard afterwards. I heard afterwards that there was some question raised and I think Mr. Youree thought the land was going to be used for Water Works purposes.

Q. I asked you how long before you went and offered the money?

A. It was immediately after this controversy came to my ear. It may have been the next day or the day after. I don't remember exactly.

Q. You went to Mr. Kerley, the Secretary of the Levee Board did you?

115 A. Yes sir. He was the man that had the checks. I may have seen others there because the Levee Board members were in and out. I don't remember as to that.

Q. What was the answer—that he had been instructed not to take the money on them?

A. That the transaction was held up and he must not do anything whatever. He must not change the status whatever.

Q. He was to do nothing to change the status and the matter would be held up in that way until after the decision of the suit by the Supreme Court.

A. I don't remember. My recollection was that the checks were then cashed. At any rate the money was deposited by the Levee Board and a certificate of deposit was issued therefor.

Q. This same certificate of deposit that was introduced here on the trial?

A. I don't know that there has been a change in it.

Q. As president of the bank you issued the certificate of deposit?

A. That is not necessary.

Q. Well you have signed it have you?

A. I don't recollect whether it was signed by me or whom. I think in 1895 I was cashier myself. I think my father was living in 1895 and he was president then.

Q. This was in 1896?

A. Well I was president at that time. My father died in 1896.

Offered in evidence certified copy of act of sale from W. B. Jacobs *et al.* to the Shreveport Gun Club.

Same is filed in evidence and marked "11."

Offered in evidence ratification of the Caddo Levee Board to Shreveport Gun Club as recorded in Book 15 of conveyances, page 521.

Same is filed in evidence and marked "12."

Captain T. F. BELL, upon being sworn, testified as follows:

116 Q. You are one of the Attorneys for the Defendant?

A. Yes sir.

Q. You have been representing Mr. W. B. Jacobs in the matter here for some time have you not?

A. Well I represented the Gun Club in that suit that went to the Supreme Court that was brought to annul the sale on the ground of lesion.

Q. You represented them after that suit was finally decided?

A. Yes sir. At occasional times whenever they would need anything connected with that I would represent them.

Q. What about the certificate of deposit? How and why was that given?

A. Well these parties made that demand under my advice. It was after the termination of that suit and after the Levee Board had brought suit to annul the sale on the ground of lesion and had evinced a spirit of hostility or unwillingness to perfect the deed.

Q. What do you mean by perfecting the deed?

A. Getting a certificate from the Registrar to the Levee Board. I represented him several times afterwards and went with him before the Levee Board and implored them to let us have the use of their name to get a certificate from the registrar.

Q. Did they *in*cline to do it?

A. Never did let us do it until here afterwards they had to remove all obstacles by paying the man additional sum.

Q. You state that you have been with him repeatedly asking them to perfect the title to this property by giving a certificate from the registrer?

A. Yes sir. We went several times. We just wanted the privilege of using their name.

Evidence closed.

The foregoing pages contain a correct transcript of my short hand notes taken in this case.

SAM. L. BARKSDALE, *Sten.*

117 7340. T. L. Stringfellow *vs.* W. B. Jacobs *et al.* Evidence.
Filed July 12, 1902.
J. H. LEVY, *Dy. Clerk.*

118 In the Supreme Court of Louisiana.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

In this case it appearing that the clerk in making the transcript of appeal has left out several documents, it is hereby agreed that same may be now copied into the record and made an addenda thereto and considered as a part thereof.

(Signed) WALTER GUION, *Att'y General.*
" W. P. HALL,
" E. W. SUTHERLIN,
Attorneys for Plaintiff.
" ALEXANDER & WILKINSON,
Attorneys for Defendant.

Filed Nov. 8th, 1907.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

119 *Excerpt from Minutes of Meeting of Caddo Levee Board Held Sept. 20th, 1895.*

"Dr. Dickinson moved that the Board's Attorneys be instructed to annul the title given to Mess. Jacobs, Enders and Jenkins, for Lake property. Carried."

Attest.
A true copy.
[SEAL.] S. N. KERLEY,
Secretary Caddo Levee Board.

Copy.

No. 3384. $1100.00.

The First National Bank of Shreveport.

SHREVEPORT, LA., *Sept. 2nd*, 1896.

The Caddo Levee board has deposited in this bank Eleven Hundred xx/100 Dollars payable to the order of the Caddo Levee Board, in current funds, on return of this certificate properly endorsed and when the title to the Cross lake lands sold by said board to W. B. Jacobs *et als.* shall be made perfect and cleared of any cloud—
(Signed) W. B. JACOBS, *Pres'd't.*

Attest.
A true copy.
(Signed) S. N. KERLEY,
[SEAL.] *Sec'l'y Caddo Levee Board.*

Extract from Minutes of Caddo Levee Board, Held September 1st, 1896.

Mr. W. B. Jacobs, representing the Gun Club, appeared before the Board and proposed to pay for the lake lands sold to the Gun Club, provided that the money be deposited subject to title being perfected.

On motion of Mr. Robinson, duly seconded, the secretary was instructed to make a special deposit of the $1100.00 subject to
120 above conditions. Carried.

A true copy.

Attest.

(Signed) S. N. KERLEY, *Sec'ty.*

[SEAL.]

Shreveport, La., May 22nd, 1902.

(Endorsed:) M. Filed in evidence 7340 May 26 1902. (Signed) J. H. Levy, Dep. Cl'k.

Extract from Minutes of Caddo Levee Board at Meeting Held Dec. 23rd, 1897.

The president stated that the purchasers of the levee lands wished to take some action, with the assistance and concurrence of the Levee Board, toward clearing titles of said purchases. After considerable discussion it was moved that the matter be referred to the land committee and board's attorney with power to act. Carried.

A true copy.

Attest.

(Signed) S. N. KERLEY,

[SEAL.] *Sec'ty Caddo Levee Board.*

(Endorsed:) Filed in evidence 7340 May 26 1902. (Signed) J. H. Levy, Dep. Cl'k.

Extract from Minutes of Caddo Levee Board at Meeting Held April 5th, 1898.

Mr. W. B. Jacobs appeared before the board and asked that the title to the purchase of the lands by Jacobs, Enders and others be perfected.

A true copy.

Attest.

(Signed) S. N. KERLEY,

[SEAL.] *Sec'ty Caddo Levee Board.*

(Endorsed:) Filed in evidence 7340 May 26, 1902. (Signed) J. H. Levy, Dep. Cl'k.

121 *Extract from Minutes of Caddo Levee Board at Meeting Held Nov. 15th, 1900.*

Capt. Bell of committee to contract for surveying the levee lands reported that on account of the state land department having under consideration the transfer to the levee board of unsurveyed lands they have decided not to incur the expense of surveying. Action of the committee was approved.

Mr. Taylor offered a brief or written argument of Captain Bell's addressed to Hon. J. M. Smith, state registrar, asking that the unsurveyed lake lands be deeded by the state to the levee board, and made objection to the request so far as cross lake lands were concerned and made a motion that this part be stricken out. The secretary to so notify the registrar. After considerable discussion the yeas and nays were called for.

Yeas: Smith, Taylor, Lane and Robinson.

Nays: Bell, Glassell, Sentell.

A true copy.

Attest:

(Signed) S. N. KERLEY,
[SEAL.] *Sec't'y Caddo Levee Board.*

(Endorsed:) Filed in evidence 7340 May 26, 1902. (Signed) J. H. Levy, Dep. Cl'k.

Extract from Minutes of Caddo Levee Board at Meeting Held Nov. 28th, 1900.

It was moved and carried that no bids under $5.00 per acre would be considered.

A true copy.

Attest:

(Signed) S. N. KERLEY,
[SEAL.] *Sec't'y Caddo Levee Board.*

(Endorsed:) Filed in evidence 7340 May 26, 1902. (Signed) J. H. Levy, Dep. Cl'k.

Extract from Minutes of Caddo Levee Board at Meeting Held Dec. 18th, 1901.

Messrs. W. B. Jacobs and Levi Cooper presented a written proposition to complete title to Gun Club lands in Cross Lake, offering $3500.00 additional. On motion proposition was accepted and the president was authorized to take proper steps to perfect title
122 under said proposition. Carried.

A true copy.

Attest:

(Signed) S. N. KERLEY,
[SEAL.] *Sec't'y Caddo Levee Board.*

(Endorsed:) Filed in evidence 7340 May 26th, 1902. J. H. Levy, Dep. Cl'k.

Copy. Copy.

STATE OF LOUISIANA,
AUDITOR'S OFFICE,
BATON ROUGE, *Sept.* 5, '96.

S. N. Kerley, Esq., Sec't'y Caddo Levee Board, Shreveport, La.

DEAR SIR: Replying to your favor of the 3rd inst. in reference to deposit of the $1100.00 in First Nat. Bank until such time as the Board may perfect title to land to Gun Club, for which this deposit is male, I beg to say, that I can see no objection to such a course since he conditions as they are.

When the controversy is adjusted and the money paid you can then remit.

Very respectfully,
(Signed) W. W. HEARD, *Auditor.*

A true copy.
(Signed) S. N. KERLEY,
Sec't'y Caddo Levee Board.

(Endorsed:) Filed in evidence 7340 May 26, 1902. (Signed) J. H. Levy, Dep. Cl'k.

123 Levee B'd to Cooper & Leonard. Land.

STATE OF LOUISIANA,
Parish of Caddo:

Be it known, that this day before me F. A. Leonard, Clerk & *ex officio* Recorder and Notary Public, in and for the said parish, duly commissioned and sworn, came and appeared, The Caddo Levee Board herein represented by its President Walter J. Crowder, and by its Land ageat, J. C. Beasley, acting by authority of a resolution of said board, who declared that they do by these presents Grant, Bargain, Sell, Convey and Deliver, with full guarantee of title, and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property herein conveyed unto Levi Cooper and Albert H. Leonard, the following described property, towit:

The S. W. ¼ of N. W. ¼ and frac'l S. W. ¼ Sec. 2 frac'l N. E. ¼ & frac'l N. ½ of N. W. ¼ & frac. N. E. ¼ of S. E. ¼ Sec. 3—frac. Vest ½ & frac. S. ½ of S. E. ¼ Sec. 5, Lots 2, 3, 4, 5, & 8 & frac. N. E. ¼ of S. E. ¼ Sec. 8; frac. N. W. ¼ & frac. N. E. ¼ & frac S. ½ Section 9; frac. S. W. ¼ Sec. 10, frac. West ½ and frac. west ½ of E. ½ Sec. 11; lots 2, 3, 5, 8, 10, 11, 12, 13, 14 & S. W. ¼ of N. W. ¼ Sec. 14; N. ½ of N. W. ¼ & frac. N. ½ of N. E. ¼ & frac. E. ½ of E. ½ & S. W. ¼ of S. E. ¼, S. ½ of S. W. ¼, N. W. ¼ of S. W. ¼ S. W. ¼. of N. W. ¼—S. E. ¼ of N. W. ¼, S. W. ¼ of N. E. ¼, N. E. ¼ of S. W. ¼, N. W. ¼ of S. E. ¼ of Section fifteen—frac'l N. E. ¼ of section 16, frac'l S. ½ Secion 20—S. ½ & frac. N. ½ Sec. 21—all of section 22 W. ½

of W. ½ Sec. 23, E. ½ of N. E. ¼ Sec. 26—N. W. ¼ & W. ½ of N. E. ¼, and N. W. ¼ of S. W. ¼ and lots 2, 3, & 4 section 26.

Northwest ¼ & N. ½ of N. E. ¼ Sec. 27—S. ½ of N. E. ¼ and N. ½ of S. E. ¼ section 27—N. ½ of S. ½ & N. ½ of section 28—and frac. N. ½ of section 29 all in township eighteen North Range 14 west; also section- 33 & 34 township 19, N. R. 14 West; also the S. ½ of S. E. ¼ and the Southwest quarter of sect. 27 and the northeast quarter of section 34, Township 18 N. Range 14 West, containing in all four thousand nine hundred and twenty-nine acres more or less it being understood that by this act said vendor conveys all of its right, title and interest in and to all lands known as
124 Cross Lake, not previously sold to the Gun Club.

To have and to hold said described property unto said purchaser their heirs and assigns forever.

This sale is made for the consideration of the sum of Twelve hundred and thirty two & 50/100 dollars cash in hand paid, the receipt of which is hereby acknowledged.

The certificate of mortgage is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office in said Parish of Caddo, in Presence of competent witnesses E. H. Randolph and J. M. Levy on this 19, day of September A. D. Eighteen hundred and ninety-five.

WALTER J. CROWDER,
President Caddo Levee Board.
J. C. BEASLEY,
Ag't Levee Board.
A. H. LEONARD.
LEVI COOPER.
F. A. LEONARD,
Clerk & ex Off. Recorder & Notary Public.

Attest:
E. H. RANDOLPH.
J. M. LEVY.

(Endorsed:) The Caddo Levee Board to Levi Cooper & A. H. Leonard. Sale of Land. Filed & Recorded Sept. 21, 1895. F. A. Leonard, Clerk & Ex-off. Recorder.

(Endorsed.)

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office in conceyance book 16 page 193.

Given under my hand and seal of office this 27 day of May 1902.

(Signed) F. A. LEONARD,
Clerk and ex Officio Recorder.

Levee B'd to Dillon. Land.

STATE OF LOUISIANA,
Parish of Caddo:

Be it known, that this day before me Lewis E. Carter a Notary Public in and for the said Parish duly commissioned and sworn, came and appeared Walter J. Crowder, President of the Caddo Levee Board acting under a resolution of the Board of Directors, hereto annexed who declared that they do by these presents, Grant, Bargain, Sell, Convey and Deliver, with full gu-rantee of title, and with complete transfer and subrogation of all rights and action of warranty against all former proprietors of the property herein conveyed
125 unto Wm. F. Dillon of Shreveport, Louisiana, the following described property, to-wit: Section Seventeen (17) Township Nineteen (19) Range Fourteen (14), containing 641.44/100 acres more or less, situated in Caddo Parish, Louisiana.

To have and to hold said described property unto said purchaser, his heirs and assigns forever.

This sale is made for the consideration of the sum of $160.35 (one hundred and sixty & 35/100 dollars) payable as follows: three hunhundred and two & 36/100 acres in lieu of lands short in previous sale and eighty four & 98/100 dollars cash in hand paid, receipt of which is hereby acknowledged. The said three hundred and two & 36/100 acres being in lieu of the same number of acres paid for by said vendee for which he received no title and the balance of said section seventeen (17) to wit; 339.08/100 acres said Dillon pays twenty five cents per acre, to-wit; eighty four & 98/100 dollars as expressed above as the consideration.

The certificate of mortgages is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office, in said Parish of Caddo, in presence of J. W. Agurs and J. L. Hargrove competent witnesses on this the 19th day of November A. D. Eighteen Hundred and Ninety six (1896).

WALTER J. CROWDER,
Pres't of Caddo Levee Board.
W. F. DILLON.
LEWIS E. CARTER,
Notary Public.

Attest:
J. W. AGURS.
J. L. HARGROVE.

SHREVEPORT, LA., *Nov.* 19, 1896.

The following is a copy of part of the proceedings of the Caddo Levee Board at a meeting held this day:

"Dr. Dickson and W. J. Crowder reported that Captain W. F. Dillon is due 302.36/100 acres on sale made to him of the 5,054 acres by the Caddo Levee Board.

Dr. Dickson moved that 302.36 acres of Section No. 17, township

No. 19 Range 14, be transferred to said Dillon in lieu of the
126 302.36 acres for which he has paid and received no title and the balance of said section 17 be sold to said Dillon for 25¢ per acre."

Carried.

A true copy.

S. N. KERLEY,
Sec't'y Caddo Levee Board.

(Endorsed:) Walter J. Crowder pres't Caddo Levee Board to W. F. Dillon. Sale of Sect. 17 T. 19 Range 14. And Resolution of Caddo Levee Board. Filed & Recorded November 24, 1896. W. G. Boney, D'y Clerk & Ex-off. D'y Recorder.

(Endorsed.)

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office in conveyance book 17 page 612.

Given under my hand and seal of office, this 27 day of May, 1902.

(Signed) F. A. LEONARD,
Clerk and ex Officio Recorder.

Caddo Levee Board To W. F. Dillon. Sale of Land. Copy. 8. Filed in evidence in 7340 May 27, 1902. (Signed) F. A. Leonard, Clerk.

127 Levee B'd to Rainey Carter. Land.

STATE OF LOUISIANA,
Parish of Caddo:

Be it known, That this day before me Lewis E. Carter a Notary Public in and for said parish, duly appointed commissioned and sworn, came and appeared Walter J. Crowder, President of the Caddo Levee Board, acting under a resolution of Board of Directors of said company, a copy of which is hereto annexed, also J. C. Beasly as agent for said Levee Board, as per a resolution of said board hereto annexed, who declared that it does by these presents Grant, Bargain, Sell, Convey and Deliver with full guaranty of title and with complete transfer and subrogation of all rights and actions of warranty, against all former proprietors of the property presently conveyed unto Rainey Carter of Shreveport Caddo Parish, La., the following described property, to-wit: Sections six, eighteen, twenty, twenty eight, twenty one, twenty seven, nine, except one hundred and twenty two acres sold to T. T. Land and west half of section twenty two (6, 18, 20, 28, 21, 27, 9 less 122 acres & W. ½ of 22) all in township nineteen (19) Range fourteen (14) containing five thousand and fifty four 20/100 (5054.20/100) acres, also the West half of

south west quarter and south west quarter of Northwest quarter and east half of south east quarter of section twenty six (26) Township fifteen (15) Range twelve (12) South half of Southeast quarter section thirty five (35) Township fifteen Range twelve (12) containing two hundred and eighty (280) acres lots four, five and twelve (4, 5, & 12) section thirteen (13) Township sixteen (16) Range thirteen (13) according to map in Book "S" page 884, containing fifty nine (59) acres; also one hundred acres (100) in township seventeen (17) Range thirteen (13) as per deed in Book of conveyances "Y" page 128; also section 36 Township twenty, Range, 15 containing 553 acres; also section thirty two (32) township range fourteen containing 581 acres, situated in Caddo Parish, State of Louisiana.

To have and to hold said described property unto said purchaser his heirs and assigns forever.

This sale is made for the consideration of the sum of Six-
128 teen hundred and fifty-six & 86/-00 dollars ($1656.86) cash in hand paid, the receipt of which is hereby acknowledged by said president and also by S. N. Kerley, Secretary of said board.

The certificate of mortgages is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office in said parish of Caddo, in presence of J. H. Hillyard and V. L. Fulton competent witnesses on this 21st day of May A. D. Eighteen hundred and ninety five.

CADDO LEVEE BOARD,
Per WALTER J. CROWDER, *Pres't.*
RAINEY CARTER,
J. C. BEASLEY, *Agt.*
S. N. KERLEY, *Sect.*
LEWIS E. CARTER,
Notary Public.

Attest:
J. H. HILLYARD.
V. L. FULTON.

SHREVEPORT, LA., *M'ch* 5, 1895.

At a meeting of the Caddo Levee Board held in the secretary's office March 5, 1895, the following resolution or motion prevailed:

"That Mr. J. C. Beasley was appointed land agent with instructions to sell at a price not less than as follows: in lots of 640 acres and under at 1.25; in lots of 640 to 2000 acres at 50¢ per acre and above 2000 acres at 25c. per acre. Said motion was carried unanimously.

I certify that the above resolution is an exact copy or true copy of the minutes of the board as passed Mch. 5, 1895.

S. N. KERLEY,
Sect. Caddo Levee Board.

Endorsed: Caddo Levee Board to Rainey Carter. Sale of 6622.20/100 acres Land. Filed & Recorded May 22d, 1895. W. G. Boney, Dy. Cl'k & Ex-off Dy. Recorder.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office; in conveyance book 15, page 306.

Given under my hand and seal of office, this 27 day of May, 1902.

129 F. A. LEONARD,
Clerk and ex Officio Recorder.

LIST OF LANDS.

Descriptive List of Swamp and Overflow Lands, Situate in the Parish of Caddo, Transferred by the Louisiana State Land Office to the Caddo Levee District by Virtue of Act #74, Approved July 6th, 1892.

	Sect.	Area.	Area.
T. 15 N., R. 11 W., N. W. District:			
None.			
T. 15 N., R. 12 W., N. W. District:			
Lot 3	5	3.68	
E. ½ of S. E. ¼	17	80.78	
S. ½ of N. W. ¼ & S. ½	22	400.25	
Lots 12, 13, & 14, or N. W. ¼ of S. W. ¼ & S. ½ of S. W. ¼	23	120.00	
Lots 7, 11, 12, 13, 14 & 15	26	232.44	
Fractional	28	5.00	
Lots 8, 10, 11 & 12	35	129.60	
			971.75
T. 15 N., R. 13 W., N. W. District:			
S. W. fr'l ¼	1	127.36	
S. ½ of N. ½ & lots 1, 2, 3 & 4	2	195.24	
S. ½ of N. W. ¼, S. W. ¼ of N. E. ¼ & lots 1, 2, 3, & 4	3	202.99	
			525.59
T. 16 N., R. 12 W., N. W. District:			
None.			
T. 16 N., R. 13 W., N. W. District:			
None.			
130 T. 16 N., R. 14 W., N. W. District:			
S. W. ¼ of S. E. ¼	23	40.00	
N. ½ of S. W. ¼	25	81.10	
			121.10
T. 17 N., R. 13 W., N. W. District:			
None.			

	Sect.	Area.	Area.
T. 17 N., R. 14 W., N. W. District:			
None.			
T. 17 N., R. 15 W., N. W. District:			
None.			
T. 18 N., R. 13 W., N. W. District:			
None.			
T. 18 N., R. 14 W., N. W. District:			
None.			
T. 18 N., R. 15 W., N. W. District:			
None.			
T. 19 N., R. 14 W., N. W. District:			
All of	6	631.60	
W. ½	22	320.20	
All of	18	638.36	
All of	20	641.44	
Lot 1, N. W. ¼ & E. ½	28	450.80	
Lots 1, 2, 6, 7 & 9	33	193.80	
All of	34	567.04	
			3443.24
T. 19, N., R. 15 W., N. W. District:			
None.			
T. 20 N., R. 14 W., N. W. District:			
S. E. ¼	30	159.96	159.96
T. 20, N., R. 15 W., N. W. District:			
N. W. ¼ of S. W. ¼ & S. ½ of S. W. ¼	3	126.86	
N. E. ¼ of N. W. ¼	18	40.08	
131 N. W. ¼ of N. W. ¼	17	39.87	
Lots 1, 2, & 3	7	115.96	
Lots 1, 6, 7, N. E. ¼ of N. W. ¼ & N. E. ¼	8	257.34	
E. ½	10	330.80	
E. ½	14	351.80	
T. 20, N., R. 15 W.—Continued:			
Am't br'ght f'w'd	...	1262.71	
Lots 2, 4, 5, 9, 10, 11 & 12	19	164.68	
Lots 3, 4, 5, 6, 7, S. ½ of N. E. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E. ¼ & S. W. ¼	21	511.12	
All of	27	526.04	
Lots 1, 5, & 6	32	208.16	
N. W. ¼ of N. W. ¼, S. ½ of N. W. ¼, N. E. ¼ and S. ½	35	562.15	
			3234.86

	Sect.	Area.	Area.
T. 21 N., R. 14 W., N. W. District:			
None.			
T. 21 N., R. 15 W., N. W. District:			
Lots 1, 2, 3, 4, 5, 6, 7 & 8	27	238.46	
Lots 5, 6, 7, 8, S. W. ¼ of S. W. ¼, E. ½ of S. W. ¼ & S. E. ¼	29	384.84	
Lots 2, 3, 5, & S. E. ¼ of S. E. ¼	30	119.80	
Lot 1, E. ½ of N. W. ¼, S. W. ¼ of N. W. ¼, S. W. ¼ & E. ½	31	623.56	
All of	33	648.04	
			2014.70
T. 22 N., R. 15 W., N. W. District:			
E. ½ of N. E. ¼	1	84.05	
S. W. ¼ of S. E. ¼	6	44.13	
W. ½ of N. E. ¼, W. ½ of S. W. ¼ & N. W. ¼	7	320.00	
132 S. W. ¼ of S. E. ¼ & S. ½ of S. W. ¼	8	120.38	
S. ½ of S. W. ½	9	80.00	
S. W. ¼ of N. W. ¼	12	39.92	
S. W. ¼ of N. W. ¼ & W. ½ of S. W. ¼	15	120.15	
N. ½ of N. W. ¼ & N. E. ¼	17	241.50	
N. E. ¼ of N. W. ¼, E. ½ of S. W. ¼ & S. ½ of S. E. ¼	18	200.12	
N. E. ¼ of N. W. ¼ & N. W. ¼ of N. E. ¼	22	80.05	
S. W. ¼ of N. W. ¼ & S. ½ of S. W. ¼	23	120.15	
W. ½	26	320.40	
E. ½ of N. E. ¼	27	80.05	
N. E. ¼ of N. E. ¼, S. W. ¼ of N. E. ¼ & E. ½ of S. E. ¼	34	160.00	
W. ½	35	320.00	
			2330.90
T. 23 N. R. 14 W., N. W. District:			
E ½ of S. W. ¼	31	88.45	88.45
T. 23 N. R. 15 W., N. W. District:			
S. E. ¼ of N. E. ¼	12	40.12	
S. W. ¼ of S. E. ¼	13	40.20	
W. ½ of S. W. ¼	24	80.50	
N. E. ¼ of S. E. ¼	23	40.02	
S. W. ¼ of S. W. ¼	25	40.25	
S. ½ of N. E. ¼ & E. ½ of S. E. ¼	26	160.10	
S. W. ¼ of S. W. ¼, S. E. ¼ of S. E. ¼ N. ½ of S. E. ¼ & N. E. ¼	36	321.00	
			722.19

Recapitulation.

T. 15 N. R. 12 W.		971.75	
T. 15 N. R. 13 W.		525.59	
T. 16 N. R. 14 W.		121.10	
T. 19 N. R. 14 W.		3443.24	
T. 20 N. R. 14 W.		159.96	
	T. 20 N. R. 15 W.	3234.86	
133	T. 21 N., R. 15 W.	2014.70	
	T. 22 N., R. 15 W.	2330.90	
T. 23 N., R. 14 W.		88.45	
T. 23 N., R. 15 W.		722.19	
			13612.74

I, John S. Lanier, Register of the Louisiana State Land Office, do hereby certify the above and foregoing list, from pages 1 to 4 inclusive, to be a true and correct list of all the swamp and overflowed lands belonging to the State of Louisiana, within the limits of the parish of Caddo, as shown by the records of this office embracing 13612.74 acres and the same are hereby transferred under Act #74 of 1892 to the Caddo Levee District.

In testimony whereof witness my official signature and seal of the State Land Office at Baton Rouge, La., this 11 day of June 1894.

JOHN S. LANIER, *Register.*

Endorsed: State of Louisiana to Caddo Levee Board. List of Lands, &c. Filed & Recorded 1st day of Nov. 1894. F. A. Leonard Clerk & *ex officio* Recorder.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby testify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office in conveyance book 14 page 696.

Given under my hand and seal of office, this 27 day of May 1902.

F. A. LEONARD,
Clerk and ex Officio Recorder.

(Endorsed:) State of Louisiana. To Caddo Levee Board. Transfer of Land. 9 Filed in evidence in 7340 May 27/1902 (Signed) F. A. Leonard, Clerk.

(Here follows diagram marked p. 134.)


CHART
TOO
LARGE
FOR
FILMING

[Endorsed on map:] H. Filed in evidence in 7340 May 26, 1902. (Signed) J. H. Levy, Dy. Clerk.

135 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Called, Argued, and Continued.

NEW ORLEANS, TUESDAY, *November 19th*, 1907.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, and Olivier O. Provosty, Associate Justices.

Absent: Alfred D. Land, Associate Justice.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

This cause came on this day to be heard, and was argued until 3.30 o'clock, P. M., the usual hour of adjournment, by Mr. Walter Guion, Attorney General of the State of Louisiana, on behalf of the plaintiff and appellant, when the Court ordered said cause to be continued until to-morrow morning, at 11 o'clock, for resumption of argument.

Called, Argued, and Submitted.

NEW ORLEANS, WEDNESDAY, *November 20th*, 1908.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, and Olivier O. Provosty, Associate Justices.

Absent: Alfred D. Land, Associate Justice.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

This cause continued from yesterday, Tuesday, the nineteenth day of November instant, came on this day further to be heard and was argued by counsel: Mr. Walter Guion, Attorney General of the State of Louisiana and Mr. William Pike Hall, for the plaintiff and appellant; Mr. John Dallas Wilkinson, for the defendant
136 and appellee. The cause was then taken under advisement by the court upon the briefs now on file for both parties.

Order Re-assigning Case for Re-argument.

NEW ORLEANS, MONDAY, *November 30th*, 1908

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

By the Court.

The Court, *ex proprio motu*, directs that this case be set down for re-argument.

Called and Continued.

NEW ORLEANS, MONDAY, *January 18th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

This cause came on this day to be heard, whereupon, upon the motion of Mr. Ruffin Golsan Pleasant, herein appearing on behalf of W. P. Hall, and E. W. Sutherlin, Associate counsel, and upon suggesting to the court that Walter Guion, Esquire, Attorney General of the State of Louisiana, is now sick and physically unable to attend at the re-argument of this case; that he is now at Covington, Louisiana, for the recuperation of his health; that he is the chief law-officer of the State and leading counsel for the plaintiff
137 in this case; it is ordered by the Court that this cause be continued and re-assigned for trial and re-argument.

Called, Argued, and Submitted.

NEW ORLEANS, MONDAY, *January 18th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, and Alfred D. Land, Associate Justices.

Absent: Olivier O. Provosty, Associate Justice.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

Pursuant to the order herein entered on the 30th day of November, A. D. 1908, this cause came on this day to be heard and was argued by counsel: Mr. William Pike Hall opened for the plaintiff and appellant; Mr. John Dallas Wilkinson replied on behalf of the defendant and appellee, and Mr. Hall closed the argument. The Court thereupon, took said cause under advisement upon the briefs for both parties and the papers now on file.

Final Judgment.

NEW ORLEANS, MONDAY, *March 1st*, 1909.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honor Mr. Justice Monroe, pronounced the opinion and judgment of the court in the following case:

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

On Appeal from the First Judicial District for the Parish of Caddo.

138 It is, therefore, ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed, and that there, now, be judgment in favor of plaintiff, the State of Louisiana, and against the defendant, the Cross Lake Hunting & Fishing Club, decreeing plaintiff to be the sole owner of the lands described in the petition herein filed, and, further, decreeing the title set up by defendant, including the attempted sale from the Board of Commissioners of the Caddo Levee District to W. B.

Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders, of date August 20, 1895, and all *mesne* conveyances, to be null, void and of no effect.

It is further adjudged and decreed that defendant recover the sum of $751.09, with interest thereon, at the rate of 5% per annum from judicial demand until paid, and that it be allowed to retain the property in controversy in its possession until payment thereof.

It is further decreed that defendant pay all costs.

Provosty, J., dissents, and hands down a separate opinion.

Land, J., recused, having while District Judge passed on defendant's title in another litigation.

Opinion of the Court.

139 (Mr. Justice Monroe.)

MONDAY, *March 1st*, 1909.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

Appeal from the First Judicial District Court, Parish of Caddo—Murff, J.

Statement of the Case.

The State, through the Attorney General, brings this suit for the recovery of some 11000 acres of land, lying in the parish of Caddo and formerly constituting the bed of Cross Lake. The grounds relied on are, substantially, as follows:

1. That, by act 74, of 1892, certain swamp lands and lands acquired by the State for unpaid taxes were granted to the Board of Commissioners of the Caddo Levee District (a public corporation, created for drainage and levee purposes), subject to the condition, that the title should vest in the Board only upon the execution, by the State Auditor and Register of the State Land Office, and the registration, in the parishes where the lands lie, of deeds of conveyance thereto; that the lands here claimed were not included in the grant, but that the Board, assuming that they were so included, undertook to convey them to defendant's authors, and that the attempted conveyance was, and is, of no effect, for the reason that the Board was without title and had no authority in the premises.

2. That, even if it be held that the lands in question were included within the terms of the act of 1892, no title thereto ever vested in said Board, for the reason that no deeds of conveyance have ever been executed or recorded, as required by said act, and, hence, defendant can have acquired no title through any conveyance attempted by said Board.

3. That, should the Court find that said lands were within the terms of said act and that said Board acquired title to the same, the conveyance to defendant's authors was a disguised donation, of public property, the price purporting to have been paid having
140 been 10 cents an acre, whereas the lands were worth not less than $2 an acre, and that defendant's authors are, substantially, the same individuals who now compose the defendant corporation.

4. That, should the grounds stated not be sustained, the attempted conveyance should be decreed of no effect, because it purports to be a sale for cash, whereas, no price whatever has been paid.

5. That, should none of the grounds thus relied on be found good, the alleged sale should be annulled for lesion beyond moiety.

Defendant, by way of exception, averred that the allegations of the petition are inconsistent and that they disclose no cause of action, and, further, pleaded *res judicata;* and, the exceptions having been overruled, answered, that the lands claimed were included in the grant contained in the act of 1892, that the title was thereby vested in the Levee Board, and that it (defendant) acquired, through *mesne* conveyances, from said Board; that the price paid was sound, that the transaction was a sale, and not a donation, and that the attack made thereon, on the ground of lesion beyond moiety, is barred by the prescription of four years. And defendant further pleaded the prescription of five and ten years, and, alleging that it had been in actual possession of the lands in question, since the date of its purchase, to the knowledge, and with the consent, of plaintiff, and had paid the taxes thereon, pleaded estoppel. It further alleged that the lands, having been conveyed by plaintiff to the Levee Board, and by the Board to its authors, this attempt to recover them, if successful, would impair the obligations of a contract, in violation of the State and Federal Constitutions. And, finally, it alleged that it had paid $751.09, in the way of taxes, for which it prays judgment, with interest, in the event of an adverse ruling upon the other matters thus set up. It was admitted, on the trial, that "no deeds of conveyance of the lands in controversy have been executed by the Register of the State Land Office, or Auditor, or either of them, to the Board of Commissioners of the Caddo Levee District, and nothing of the kind has been recorded in the conveyance books in Caddo parish, up to this date."

The facts necessary to an understanding of the case are as follows: The Caddo Levee Board was created by act 74, of
141 1892, which, also, created a Board of Commissioners and charged it with the administration of the affairs of the District.

Section 9 of that act reads:

"SEC. 9 * * * That, in order to provide additional means to carry out the purpose of this act and to furnish resources to enable the said Board to assist in developing, establishing and completing the levee system in the said district, all lands, now belonging, or that may hereafter belong, to the State, and embraced within the limits of the Levee District, as herein constituted, shall be, and

the same are, hereby, granted, donated, conveyed and delivered into the said Board of Commissioners of the Caddo Levee District, whether the said lands, or parts of lands, were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been, or may hereafter be, forfeited, or bought in, by, or for, or sold to, the State, at tax sale, for non payment of taxes; where the State has, or may hereafter, become the owner of lands, by, or through tax sales, conveyances thereof shall only be made to the said Board * * * after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by, or sold to, the State, for non payment of taxes, may, at any time, within six months, next ensuing after the passage of this act, redeem the said lands, or all of them, upon paying, to the Treasurer of this State, all taxes, costs and penalties due thereon, down to the date of said redemption, but such redemption shall be deemed and shall be taken to be sales of lands, by the State, and all and every sum, or sums, of money, so received, shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months, it shall be the duty of the Auditor and Register, * * * on behalf of, and in the name of, the State, to convey to the said Board, * * * by proper instruments of conveyance, all lands hereby granted, or intended to be granted and conveyed, to the said Board, whenever, from time to time, the said Auditor and Register, * * * or either of them, shall be requested to do so by the said Board * * * or by the president thereof, and, thereafter, the said president * * * shall cause the said conveyances to be properly recorded in the conveyance offices of the respective par-
142 ishes wherein the lands are located, and, when the said conveyances are so recorded, the title to the said lands, with the possession thereof, shall, from thenceforth, vest absolutely, in the said Board, * * * its successors or grantees. The said lands shall be exempted from taxes after being conveyed to, and while they remain in the possession or under the control of, the said Board. The said Board * * * shall have the power and authority to sell, mortgage and pledge, or otherwise dispose of, the said lands, in such quantities and at such times and at such prices as to the Board may seem proper. But all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Caddo Levee District and shall be drawn only upon the warrants of the President of the said Board, properly attested, as provided in this act."

The lands here claimed constituted the bed of a body of water, near Shreveport, known as Cross Lake, which, in consequence of the removal of a raft, which, for many years, obstructed Red River, and the reconstruction of the levees, is drying up, leaving said lands available for farming purposes, the 11,000 acres in controversy being, at the time of the trial in the District Court, worth from $50,000 to $100,000, though they were not worth that much at the date of the transaction out of which this litigation has arisen. It appears that, in August, 1895, the Levee Board (meaning the Board of

Commissioners of the Caddo Levee District) adopted a resolution authorizing the sale of the lands in question to the "Gun Club," for $1100 (or, say, 10 cents an acre for 11,000 acres), cash; and that, there being no such corporate entity as the Gun Club, the Secretary of the Board was handed three checks signed by individuals, for amounts aggregating that specified in the resolution. A controversy then arose between the individuals constituting the "Gun Club" and others, constituting the "Rod & Gun Club," as to which organization was intended by the resolution, and the secretary of the Board was instructed not to collect the checks which had been handed to him (and which were, afterwards, returned to the drawers.) The Board, about that time, however, appears to have executed an instrument conveying the lands to the individuals constituting the Gun Club, who, then, incorporated themselves under the name of the "Shreveport Gun Club," and transferred the lands to the corporation so created, the president of the Board ratifying the transfer. Shortly afterwards (On Sept. 20, 1895) the Board adopted a resolution instructing its attorney to annul the conveyance which had thus been made, and a suit was then instituted by the Rod & Gun Club, or the individuals so styling themselves, to which the Gun Club and the Board were made, or became, parties, and which resulted in a judgment in this Court, confirming the conveyance in question. Rod & Gun Club *vs.* Board, 48 Ann. 1081. The members of the Shreveport Gun Club then appear to have organized the corporation now before the Court as defendant and to have transferred the land in dispute to it. The transcript does not contain the resolution authorizing the conveyance of the lands, or the act of conveyance, or the act of ratification (by the president of the Board), but it does contain a copy of the resolution instructing the attorneys of the Board to annul the conveyance, and it also shows that, on Sept. 1, 1896, Mr. Jacobs (one of the grantees) appeared before the Board and proposed to pay for lake lands sold to the Gun Club, "provided the money be deposited subject to title being perfected," that the Board instructed its Secretary "to make a special deposit of the $1100, subject to above condition," that, on September 2, 1896, Mr. Jacobs, in his capacity as President of the First National Bank of Shreveport, issued a certificate reading: "The Caddo Levee Board has deposited in this bank eleven hundred dollars, payable to the order of the Caddo Levee Board, in current funds, on return of this certificate, properly indorsed, and when the title to the Cross Lake Lands, sold by said Board to W. B. Jacobs *et als.*, shall be made perfect and cleared of any cloud."

143

Thereafter, from time to time, Mr. Jacobs appeared before the Board and requested that action be taken in the matter of clearing the title, and, in December 1901, he and Levi Cooper made a proposition to pay $3500, additional, for the lands, which the Board accepted, thereupon authorizing its president "to take proper steps to perfect the title." The steps taken were, however, ineffectual, and, in 1902, the General Assembly passed an act (No. 171) authorizing the Register of the State Land Office to sell the Cross Lake

lands "at, not less than, $5 an acre, nor, in greater quantities than 320 acres to any one person," preference to be given to *bona fide* settlers, and further providing:

"SECTION 4. * * * That Act No. 74 * * *, of 1892, and act No. 160, of * * * 1900, be, and the same are, hereby, repealed, in so far as they may, in any way, whatever, affect
144 any of the lands described herein, the same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them, by any instrument of conveyance from the State, as required by said act, to complete the title of the same." And, thereafter, so far as the defendant now before the Court is concerned, the matter remained in *statu quo* until 1905, when this suit was brought. There was judgment in the District Court in favor of defendant and the State has appealed.

Opinion.

In our opinion, the Levee Board acquired no title to the lands in dispute, under the act of 1892, because no deed of conveyance thereto was ever executed by the Auditor and Register, or either of them, and, of course, no such deed was ever recorded, and, as, for the same reason, the Board acquired no title, under act No. 160, of 1900, the argument, that the title acquired under that act, inured to the benefit of the defendant, has nothing to rest on. This conclusion renders it unnecessary to consider the other issues presented by the pleadings, since, even were it conceded that the lands were included within the terms of the act of 1892, if it be true, that the title did not vest in the Board, and that the execution and registory of the deed of conveyance was necessary to accomplish that result, such concession could not affect the judgment to be herein rendered. And, so, if it be true that the Board acquired no title to the land, then, no judgment rendered in a suit to which it may have been a party, but to which the owner of the land was not a party, can support a plea of *res adjudicata* as against the latter; and it is wholly immaterial whether the Board attempted to sell the land or to give it away, or whether it received an amount agreed to be paid or received nothing. Our reasons for the conclusion that the Board acquired no title, and could, therefore, convey none, predicated on the admitted fact that no deed of conveyance to the lands in question has ever been executed by the auditor or Register, are, briefly, as follows:

Counsel for defendant concede that the statutory provision upon the subject of the execution and registry of acts of conveyance
145 relate to the lands acquired by the State by reason of the non-payment of the taxes due on them, but they argue that those provisions have no bearing upon the swamp, or other, lands, embraced within the terms of the statute. This is, at least, an admission that, *quo ad* (what, for convenience, we will call) the "tax lands," the grant contained in the statute is not a grant *in presenti*. The question, then, is, does it purport to vest title, *in presenti*, to any other lands?

The section of the law which we are interpreting begins with a long sentence, granting to the Board "all lands, now belonging, or that may hereafter belong, to the State," (and embraced within the district) then, using language which is said to confine the grant to swamp and tax lands (as contradistinguished from what are called "Sovereignty" lands); then, qualifying the grant by saying that tax lands shall be conveyed to the Board only after the period of redemption shall have expired and providing that the former owners may redeem within six months and that the money so realized shall be paid into the State Treasury and placed to the credit of the Levee Board—and, there, the sentence ends. The plain, indisputable, meaning, so far, therefore, is, that the grant of the tax lands, at all events, is not a grant, *in presenti*. No language could convey that idea more clearly, and the language used is rounded with a period. Then, we have a new sentence which has no more, necessary, or grammatical, connection with the tax lands than with swamp lands, and, which, by its terms, deals with both (and with any other lands which might be considered included in the grant). It reads: "After the expiration of the said six months" (referring to the six months within which the former owners of tax lands are allowed to redeem) "it shall be the duty of the Auditor and Register, on behalf, and in the name, of the State, to convey to the said Board * * *, by proper instruments of conveyance, all lands hereby granted, or intended to be granted and conveyed * * *" (whenever those officers shall be so requested), "and, thereafter, the said president * * * shall cause the said conveyances to be properly recorded * * *, and, when said conveyances are so recorded, the title to the said lands, with the possession thereof, shall, thenceforth, vest, absolutely, in the said Board," &c.

146 Now, it appears to us that, if the intention had been to distinguish between tax, and swamp, lands, in the matter of the requirement with respect to the execution of instruments of conveyance and their registry, the lawmakers would have so expressed it. But, why, if they intended the grant of the swamp lands to become effective, at once, do they make it the duty of the Auditor and Register, only; "*After the expiration of six months, to convey* * * * *all lands hereby granted, or intended* to be granted, or conveyed," and why do they say, with regard to *all* such lands, "*When such conveyances are so recorded, the title to the said lands, with the possession thereof*, shall, *thenceforth*, vest, absolutely, in the said Board"? We are bound to assume that the makers of the law knew the difference between "*all* lands, granted, or intended to be granted," by them, and any given class, or parts of such lands, and we cannot assume that, intending the grant, with respect to some of the lands to take effect, *in presenti*, they would, practically, have prohibited the Auditor and Register from executing conveyances to *any* of the lands until after the expiration of six months, and would have said that "*thenceforth*" (that is to say, after the execution and registry of such conveyances), "the *title* to the said lands *with the possession* thereof," shall "*vest*" in the grantee. If it had been the intention that the title to all, or to any part, of the lands

should be vested in the Board merely by virtue of the Statute, one would suppose that it would have been made the duty of the Auditor and Register to execute conveyances as soon as the statute was adopted, at least, for so much of the land as was intended to be granted in that way; but the statute, by imposing upon those officers the duty of executing such conveyances, "after six months," impliedly prohibited them from doing *do* within that time. Upon the whole, we are of opinion that the law in question is susceptible of but one interpretation, *i. e.*, that its makers intended that disposable title to all lands, granted, or intended to be granted, by it, should vest in the grantee only upon registry, in the parishes where the lands lie, of proper instruments of conveyance, executed by the Auditor and Register of the State Land Office. So far as the tax lands are concerned, the reason for thus qualifying the grant is obvious enough. The State held large bodies of land, forfeited, or
147 bought in, for taxes, some of which was subject to redemption and some, not, and endless confusion might have arisen if the Levee Board had been placed in a position to sell such lands, indiscriminately.

As to the swamp lands, it may well be, that, in many instances, there were, pending, unsettled claims and controversies, of which the land Office was advised, with which the Register, alone, was qualified to deal, and which rendered it unadvisable that new titles should issue save to the knowledge of that officer. But, whether these views, as to the reasons which inspired the law, be correct, or not, the law, itself, is plain, and it has (in effect), twice, received from this Court the interpretation which we are now placing on it; once, in a case involving lands formerly constituting the bed of a shallow lake, and, again, in a case involving lands acquired by the State under its tax laws. McDade *vs.* Levee Board, 109 La. 625; St. Paul *vs.* Louisiana Cypress Lumber Co., 116 La. 585. In the case of Williams *vs.* White Castle Lumber Company, 114 La. 450, the question here presented was not, directly, at issue, but was referred to without disapproval of the views previously expressed in the McDade case.

In conclusion, we may say that no one pretends that the Congress of the United States or the General Assembly of Louisiana may not enact statutes granting lands *in presenti*, and no one denies that Congress has enacted statutes, which, no doubt, properly, have been construed as so intended; but we have been referred to none, so construed, which have contained provisions such as those now under consideration, and a review of the jurisprudence interpreting statutes containing dissimilar provisions would serve no useful purpose.

It is admitted that defendant has paid $751.09, of taxes, on the lands here claimed, for which, we think, it is entitled to judgment, with a right to retain the property until payment thereof.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed, and that there, now, be judgment in favor of plaintiff, the State of Louisiana, and against the defendant, the Cross Lake Hunting & Fishing Club, decreeing plaintiff to be the sole owner of the lands described in the

petition herein filed, and, further, decreeing the title set up
148 by defendant, including the attempted sale from the Board of Commissioners of the Caddo Levee District to W. B. Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders, of date August 20, 1895, and all *mesne* conveyances, to be null, void and of no effect.

It is further adjudged and decreed that defendant recover the sum of $751.09, with interest thereon, at the rate of 5% per annum from judicial demand until paid, and that it be allowed to retain the property in controversy in its possession until payment thereof.

It is further decreed that defendant pay all costs.

Provosty, J., dissents, and hands down a separate opinion.

Land, J., recused, having while District Judge passed on defendant's title in another litigation.

149 No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

Appeal from the First Judicial District Court, Parish of Caddo. A. J. Murff—Judge.

PROVOSTY, *J.*, dissenting:

The only serious question is as to whether the State did not by operation of the statute itself convey to the Levee Board an interest in the land such as the Levee Board on its part could convey.

Differently from private persons, the state may by the mere expression of her will convey title to her property. (26 A. & E. E. of L. 423; Strother *vs.* Lucas, 37 N. S. 410; 9 L. Ed. 115. Now, the statute reads that the lands "shall be and are hereby conveyed and delivered." It is not only that they "shall be" but that they "are hereby." They are not only granted but "hereby conveyed and delivered." If these words do not import a present conveyance and delivery they import nothing.

From and after the passage of the statute, the price of the lands is to go to the Levee Board in case of redemption. This shows conclusively that the intention was that from and after the passage of the statute the lands were to belong to the Levee Board.

Absolutely no discretion whatever is left to the Auditor and the Register of the Land Office is connection with the execution of the conveyance. They have to execute it upon demand. Why such demand could not be made just as well after as before a sale by the Levee Board, I cannot imagine.

If after a sale by the Levee Board the state can revoke the donation, then the donation was made with a string to it. I do not think
150 that such was the intention. I think it is perfectly clear that the legislature intended to transfer the lands presently and irrevocably to the Levee Board for the uses specified.

The language of the various grants of Congress to the states and

to railroads is that the Secretary of the Interior shall make lists and plats of the lands and "shall cause a patent to be issued * * * and on that patent the fee simple shall vest." It will be observed that this clause: "and on that patent the fee simple shall vest," is the full equivalent of the clause found in our statute: "and when said conveyances are recorded the title to the said lands shall from thenceforth vest." Now, the Supreme Court of the United States and the Supreme Courts of a number of states, construing said grants, have held that said clause, when read in connection with the granting parts of the statute importing a grant *in presenti*, did not mean that the issuance of a patent should be a condition precedent to the passing of the title of the government. This manner of construing these grants may be said to have become established jurisprudence. 26 A. & E. E. of L. 244. I can see no reason why this court should depart from that jurisprudence.

By the majority opinion, the granting clause is brought in direct and sharp conflict with the clause: "and when said conveyances are recorded the title shall from thenceforth vest absolutely," and the legislature is convicted of not having known its own mind, or known the use of language. The rule is not to read a statute in such a way as to bring the different clauses of it in conflict with each other.

What the legislature meant by saying that the title shall from thenceforth vest absolutely, is what it says, namely: that the title shall from thenceforth vest absolutely: that is to say, with the stress of "absolutely." That the title which had theretofore vested subject to the right of redemption, or to whatever other infirmities might have inhered in it, should from thenceforth vest absolutely. The majority opinion interprets the statute as if it read: "shall
151 vest;" when as a matter of fact, it reads: "shall vest absolutely." Strike out the word "absolutely," and the reasoning of the majority opinion is just as applicable. Therefore the majority opinion reduces the word "absolutely" to a useless appendage. The rule is that "In the construction of one part of a statute, every other part ought to be taken into consideration." Montesquieu *vs.* Weil, 4 La. 51.

Let it be noted that in one important respect this donation differs from the grant of swamp and overflowed lands made by Congress to the several states by the Act of 1850; and from the grants made by Congress at various times in aid of railroads. This donation embraces all the lands without exception owned by the state within the district, and the district is delimited: so that the lands intended to be conveyed are *in*dentified as perfectly as they could be in words: whereas in the grant by Congress of swamps and overflowed lands to the states the character of the lands, as being or not swamp and overflowed, had to be determined by some authority in order that the land should be *in*dentified; and so the lands granted to the railroad: before they could be *in*dentified, the railroads in aids of which they were granted had to be constructed. And yet, notwithstanding the necessity of some action for *in*dentifying the lands embraced in these congressional grants, these grants, as already stated, have been uniformly held to have been grants *in presenti*, passing the title im-

mediately, subject only to the future action of the authority charged with the duty of *in*dentifying the lands.

But even if I were mistaken in the reading by which the stress is laid on the word "absolutely," and not on the word "vest," the Levee Board, I think, would still have to be held to have had authority to sell these lands without the necessity of obtaining a formal deed to them. The situation would still be that by the first clause of the section the state divested itself and invested the Levee Board with all the equitable interest in the lands, leaving only a mere formality to be fulfilled in order that the legal title should
152 also be vested. It will be noted that the Levee Board is given the unconditional, unqualified, absolute right to demand and obtain the instrument of conveyance in question from the Auditor and the Register of the Land office at any time, that is to say, at pleasure. The Board was therefore owner, subject only to a mere formality which it was left entirely free to fulfill at any time. Now, if A were to enter with B into a contract, by which A became owner of B's lands subject only to a mere formality which A was left perfectly free to fulfill at any time; would not A be held to have the entire equitable interest in the property; and would not A have a perfect right to transfer this interest, together with the right to fulfill the formalities by which this interest was to be converted into a legal title. It follows from this that there certainly passed to the Levee Board, under this statute, an interest of which the Levee Board became immediately the owner, and which it could sell and transfer, as was done in this case.

The decisions of this court sustain I think the interpretation I have here adopted. In the case of Worden *vs.* Fisher, 52 An. 575, this court said:

"Plaintiff in the second place attacks the conveyance to the Levee Board because it rests on the signature of the Auditor alone and he invokes the provisions of the section of the amended act before cited as requiring a conveyance by the Auditor and Register of the State Land Office in the name of the State. He earnestly contends that there can be no conveyance unless signed by both Auditor and Register of the State Land Office. This we have answered by reference to the fact that the Board has accepted the price. Moreover, the State at the time and by the terms of the statute, 46 of 1892, donated completely all the lands within the district as before stated. From the date of the statute for the purpose mentioned in it the title be-
came absolutely vested in the Board. Though there were
153 methods provided by its terms to complete the donation, the fact remained that the title was placed in the name of the Levee Board."

True, in St. Paul *vs.* La. Cypress Co., 116 La. 593, the court expressed a different opinion; but it did so without examining the question anew, and basing itself upon the case of Levee Board *vs.* McDade, 109 La. 637, as if the latter case had settled the point, whereas, as a matter of fact, what was said in the McDade case was in a *Per Curiam*, on application for a rehearing, and merely incidentally, without the point having been argued at the bar, and

without the decision in the case of Worden *vs.* Fisher having been brought to the attention of the court.

The board was the mere creature of the legislature. The legislature which made it could at any moment unmake it. Its property remained entirely within the control of the legislature. The legislature could revoke the donation at any moment. Of all this there can be no doubt. But this power of the legislature continued to exist only so long as third persons had not acquired rights by contract with the Board. There can be no doubt that the legislature can create a corporation and endow it with the same faculty of receiving and holding property and of making contracts with reference thereto which ordinary corporations possess and that a donation or sale, or other transfer, of property to such a corporation has the same effect as a donation or sale or other transfer to any other corporation or person would have in so far as conveying the property or interest therein is concerned. And this is exactly what the legislature did in this case. It created this Levee Board and endowed it with the faculty of receiving and holding property and making contracts with reference thereto. This Board so created was as fully qualified to receive by donation from the legislature as any ordinary corporation or person. The fact, therefore that this Board was the creature of the legislature, and its mere agent, wholly subject to its control, does not detract one iota from its status as a body capable of
154 receiving and holding property and making binding contracts with reference thereto. The question still continues to be and is whether or not a present interest was intended to be conveyed to the Board. If yea, then the Board had a right to make contracts with reference to the interest so conveyed. If nay, then the Board had in the property no interest with reference to which it could contract.

I think the State is bound by the contract which the Levee Board made with reference to this property.

For these reasons, I respectfully dissent.

[Endorsed:] 16,631. State *v.* Cross Lake Shooting —. Dissenting opinion.

155 *Petition for Rehearing.*

Supreme Court of Louisiana.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING & FISHING CLUB.

To the Honorable the Judges of the Supreme Court of Louisiana:

The defendant represents to the court, with due respect, that there is error to its prejudice in the opinion and decree of the court herein rendered as follows:

1st. That the court erred in holding that the Act of 1892, No. 74, was not a grant *in presenti* to the Caddo Levee District of the whole and absolute title to the property sold to the defendant.

2nd. That the court erred in not holding that, if the grant did not convey absolute title, it at least conveyed an equitable title to be thereafter made a legal title at the board's request alone; that this equitable title was capable of conveyance and was conveyed by said board, and that consequently the Act No. 171 of the Acts of 1902, whereby the State undertook to repeal the grant of said lands and to direct them to be sold for the benefit of the said Caddo Levee District, was an act impairing the obligations of a contract and in contravention of the Constitution of the United States, as specially pleaded in the answer.

3rd. That the court erred in not holding that the acts and doings of the Caddo Levee District and of the Legislature and of the Officials of the State in regard to the Cross Lake Lands show on their face a collusion and conspiracy to defeat the title of the defendant to the lands sold to it by the Caddo Levee District, so as to enable the State to escape from the obligation of her grant to the Caddo Levee District, under which this defendant holds title, and to
156 enable the Caddo Levee District to avoid a title which had been judicially declared valid, and yet to obtain the entire benefit of the sale of such lands by the State, all in contravention of the obligation of the State's contract and in violation of the Constitution of the United States, as specially pleaded in the defendant's answer.

4th. That the court erred in not considering and deciding the Federal questions raised on the pleadings and by the facts of this case, and in ignoring said Federal questions so raised in its opinion when such Federal questions lay at the foundation of the case and ought not and could not be ignored.

Wherefore, defendant prays that the rehearing of this cause may be granted it, and that in such rehearing the decree of the court may be set aside and the decree of the lower court re-instated.

Respectfully submitted.

(Signed) FARRAR, JONAS, KRUTTSCHNITT & GOLDBERG,

(Signed) ALEXANDER & WILKINSON, *Att'ys.*

(Endorsed:) No. 16,631. Supreme Court of Louisiana. State of Louisiana *vs.* Cross Lake Shooting & Fishing Club. Petition for rehearing. Filed Mar. 15, 1909. (Signed) Paul E. Mortimer, Dep. Clerk.

Rehearing Refused.

NEW ORLEANS, MONDAY, *March 29th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

By the Court.

No. 16631.

STATE OF LOUISIANA
vs.
CROSS LAKE SHOOTING AND FISHING CLUB.

It is ordered that the rehearing applied for in this case be refused.

157 *Assignment of Errors.*

Supreme Court of Louisiana.

No. 16631.

STATE OF LOUISIANA
versus
CROSS LAKE SHOOTING & FISHING CLUB.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the Cross Lake Shooting & Fishing Club, the defendant in this cause, and assigns the following errors in the judgment and decree of the Supreme Court of the State of Louisiana, rendered in this cause on March 1st, 1909, and made final by the judgment refusing a rehearing rendered March 29th, 1909, and makes this assignment part of the writ of error to the Supreme Court of the United States applied for by the said defendant, to-wit:

1st. That the court erred in ignoring the federal question pointedly raised by the defendant in its answer and pleaded in bar of the demand of the State.

2nd. That the Court erred in not holding that the grant of lands made by the State of Louisiana by Act No. 74 of the Acts of 1892 to the Caddo Levee District was a contract between the State and said Caddo Levee District, enuring to the benefit of said District and to this defendant as the *bona fide* purchaser of said lands from said District, its said title to said lands having been confirmed by a judgment of the Supreme Court of Louisiana, and that the action of the State as pleaded in defendant's answer in attempting to recover said lands was barred by that clause of the Constitution of the
158 United States which forbids any State from impairing the obligation of contracts.

3rd. That the Court erred in not holding that, if there was any defect in said grant made by Act No. 74 of 1892, then that Act No. 160 of the Acts of 1900 was a confirmation of said grant of said lands to the Caddo Levee District, and that said grant enured to the benefit of the defendant, it having purchased said lands from the grantee under the Act No. 74 of 1892 and before the passage of the Act No. 160 of 1900, and that the title of defendant was protected by attack from the State by the Constitution of the United States above pleaded.

4th. That the Court erred in not holding that the grant of said

lands by Act No. 160 of 1900 must be interpreted with reference to the then existing jurisprudence of the State as set forth in the case of Worden *vs.* Fisher, 52 A. p. 575, in which it was held that a similar grant by the State to a Levee Board couched in identically the same language as the grant by Act No. 160 of 1900, vested the title absolutely and immediately in the grantee, and that defendant's title to said lands was protected from attack by the State by the clause of the Constitution of the United States above pleaded.

5th. That the Court erred in not holding that the original grant of said lands to the Caddo Levee District by Act No. 74 of 1892 was a grant *in præsenti* vesting title to said lands and authorizing the said Levee District to sell and dispose of the same, and that the rights of the defendant as purchaser from said Levee District were protected from impairment by the State by the clause of the Constitution of the United States above stated as pleaded in defendant's answer.

6th. That the Court erred in not holding that Act No. 171 of 1902 was a repeal of the grant of said lands to said Caddo Levee Dis-
159 trict, and a direct impairment of the obligation of the contract between this defendant and the said Caddo Levee District the grantee of the State, contrary to the Constitution of the United States, as pleaded in defendant's answer.

7th. That the Court erred in not holding that the action of the Caddo Levee District in declining to demand from the State Auditor's deeds for the lands sold by it to the defendant, while asking and obtaining such deeds for all other lands granted by the Acts of 1892 and 1900 aforesaid, some of such lands being a part of the very tract the balance of which were sold to this defendant, and the action of the Legislature in Act No. 171 of 1902 in repealing the grant aforesaid only in so far as it affected the lands of this defendant, and the provisions of the said act giving the Caddo Levee District the proceeds of the sales of all of said lands as if it were the owner thereof, and the action of the State Officials in bringing and prosecuting this suit for the recovery of said lands, are on their face a palpable scheme to impair the obligation of the contract between this defendant and the Caddo Levee District, and this defendant and the State of Louisiana, in contravention of the Constitution of the United States, as pleaded in defendant's answer.

Wherefore defendant prays the judgment of the Supreme Court of the United States on these assignments and prays that on due hearing the judgment of the Supreme Court of the State of Louisiana may be annulled and reversed with costs and the judgment of the District Court in and for the Parish of Caddo rendered in the cause rejecting the demand of the State may be re-instated.

And defendant will ever pray.

(Signed) FARRAR, JONAS, KRUTTSCHNITT & GOLDBERG, *Att'ys.*

(Signed) EDGAR H. FARRAR, *Counsel.*

160 (Endorsed:) No. 16,631. Supreme Court of Louisiana. State of Louisiana *versus* Cross Lake Shooting & Fishing Club. Assignment of Errors. Filed April 6, 1909. (Signed) T. McC. Hyman, Clerk.

161 UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, sitting at New Orleans, Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana as plaintiff and The Cross Lake Fishing and Shooting Club as defendant wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
162 of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Cross Lake Shooting and Fishing Club as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 5th day of April, in the year of our Lord one thousand nine hundred and nine.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed to operate as a supersedeas by
JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] No. 16,631. Supreme Court of La. State of Louisiana *versus* Cross Lake Shooting & Fishing Club. Writ of Error. Original writ of error to the Supreme Court of the United States. Filed April 6, 1909. T. McC. Hyman, clerk.

163 *Bond for Writ of Error.*

Know all men by the- presents, that we, The Cross Lake Shooting and Fishing Club, as principal, and Edgar H. Farrar, as surety, are held and firmly bound unto the State of Louisiana in the full and just sum of Ten Thousand Dollars to be paid to the said State of Louisiana its certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 6th day of April in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a term of the Supreme Court of the State of Louisiana in a suit depending in said Court, between the State of Louisiana as plaintiff and the Cross Lake Shooting and Fishing Club as defendant a judgment was rendered against the said Cross Lake Shooting and Fishing Club and the said Cross Lake Shooting and Fishing Club having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana citing and admonishing it to be and appear before the United States Supreme Court to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Cross Lake Shooting and Fishing Club, shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

CROSS LAKE SHOOTING & FISHING CLUB, [SEAL.]
p. p. FARRAR, JONAS, KRUTTSCHNITT & GOLDBERG,
Its Attorneys. [SEAL.]
(Signed) EDGAR H. FARRAR. [SEAL.]

Sealed and delivered in presence of—
(Signed) ALL P. KAMMER.
(Signed) F. H. BOHNE, JR.

164 Approved by—
(Signed) JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 16,631. Supreme Court of Louisiana. State of Louisiana *vs.* (Bond) Cross Lake Shooting and Fishing Club. Filed April 6th, 1909 (Signed) T. McC. Hyman, Clerk.

165 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing One hundred and Sixty-four pages, contain a full true and complete transcript of the proceedings had in the First Judicial District Court for the Parish of Caddo in a certain suit wherein State of Louisiana was plaintiff and Cross Lake Shooting and Fishing Club, were defendants, and also of all the proceedings had in this Honorable Court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 16,631.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at the City of New Orleans, this 21st day of April, *Anno Domini*, 1909, and in the One hundred and thirty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

166 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and Seal at the city of New Orleans, this the Twenty-first day of April, *A. D.* one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

167 THE UNITED STATES OF AMERICA:

Supreme Court of Louisiana.

The President of the United States to The State of Louisiana, through Walter Guion, its Attorney General, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a

writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein The Cross Lake Shooting & Fishing Club is plaintiff and The State of Louisiana is defendant, to show cause, if any there be, why the judgment rendered against the said Cross Lake Shooting & Fishing Club, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 6th day of April, in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of Louisiana. No. 16,631. State of Louisiana *vs.* Cross Lake Shooting & Fishing Club. Citation of Appeal. Marshal's Return. Filed April 10, 1909. T. McC. Hyman, clerk.

Received by U. S. marshal, New Orleans, La., Ap'l 7/09.

On this 8th day of April, 1909, before the undersigned authority personally came and appeared T. I. Galbreth, Deputy U. S. Marshal for the Eastern District of Louisiana, known to me as such, who being duly sworn deposes and says that he, affiant, did, on the 8th day of April, 1909, serve this writ on the State of Louisiana by handing same to the Attorney General of said State, Hon. Walter Guion, in person, in the city of New Orleans, Louisiana.

T. I. GALBRETH,
Deputy U. S. Marshal, E. Dist. of La.

Sworn to and subscribed before me on this 8th day of April, 1909.

[Seal Henry J. Carter, United States Commissioner,
Eastern District of Louisiana.]

H. J. CARTER,
U. S. Commissioner.

168 THE UNITED STATES OF AMERICA:

Supreme Court of Louisiana.

The President of the United States to The State of Louisiana, through Jared Y. Sanders, its Governor, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein The Cross Lake Shooting & Fishing Club is plaintiff and The State of Louisiana is defendant, to show cause, if any there be, why the judgment rendered against the said

Cross Lake Shooting and Fishing Club, as in said writ of error, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 6th day of April, in the year of our Lord one thousand nine hundred and nine.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Judge, Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of Louisiana. No. 16,631. State of Louisiana *vs.* Cross Lake Shooting & Fishing Club. Citation of Appeal. Marshal's Return. Filed April 19, 1909. T. McC. Hyman, clerk.

Received by U. S. Marshal, New Orleans, La., Ap'l 7/09.

On this 19th day of April, 1909, before the undersigned authority personally came and appeared T. I. Galbreth, Deputy U. S. Marshal for the Eastern District of Louisiana, personally known to me as such, who being duly sworn deposes and says that he, affiant, did, on the 17th day of April, 1909, serve this writ on the State of Louisiana by handing same to the Governor thereof His Excellency, Jared Y. Sanders, in person, in the City of New Orleans, Louisiana.

T. J. GALBRETH,
Deputy U. S. Marshal.

Sworn to and subscribed before me on this 19th day of April, 1909.

[Seal Henry J. Carter, United States Commissioner, Eastern District of Louisiana.]

H. J. CARTER,
United States Commissioner.

Endorsed on cover: File No. 21,652. Louisiana supreme court. Term No. 856. Cross Lake Shooting and Fishing Club, plaintiff in error, *vs.* The State of Louisiana. Filed May 6th, 1909. File No. 21,652.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 217.

CROSS LAKE SHOOTING AND FISHING CLUB,

PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA.

In Error to the Supreme Court of the State of Louisiana

(Record No. 21,652)

MOTION TO DISMISS OR AFFIRM.

Comes now the defendant in error, the State of Louisiana, by its counsel, Walter Guion, Attorney General, appearing in that behalf, and W. P. Hall, associate counsel, and moves the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction in the Supreme Court

of the United States to review the judgment of the State Court herein, being a judgment of the Supreme Court of one of the United States, to-wit: the Supreme Court of the State of Louisiana, for the reason that:

No Federal question, sufficient to give jurisdiction to this Court, to review the decision of the said State Court, is involved in the cause or was decided by the Supreme Court of the State of Louisiana, or was necessary for its decision.

That the Supreme Court of the State of Louisiana based its decision upon sufficient grounds which did not involve, and are not claimed to involve, a Federal question, to-wit: the construction of a statute of the State of Louisiana, the validity of which was not in any manner involved or assailed.

And, in the alternative, if the writ of error should not be dismissed, then that the judgment of the Supreme Court of Louisiana be affirmed, on the ground that, although, in the opinion of this Court, the record may show that this Court has jurisdiction, it is manifest that said writ of error was taken for delay only, and that the question on which jurisdiction depends is so frivolous as not to need further argument.

WALTER GUION,
Attorney General of Louisiana.

W. P. HALL,
Of Counsel.

NOTICE OF SUBMISSION OF MOTION TO DISMISS OR AFFIRM.

To Messrs. Alexander & Wilkinson, and Farrar, Jonas, Kruttschnitt & Goldberg,
Counsel Representing Plaintiff in Error, Cross Lake Shooting and Fishing Club:

GENTLEMEN—Please take notice that on the 20th day of May, 1911, the motion of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of our brief of argument to be submitted with the said motion in support thereof.

WALTER GUION,
Attorney General of Louisiana.

W. P. HALL,
Of Counsel.

BRIEF.

By Act 74 of 1892 the Legislature of Louisiana created the Caddo Levee District, embracing the alluvial lands in Caddo Parish subject to overflow by the waters of the Red River, and, by Section 9 of that act, made the following grant to the Board of Commissioners of that district for levee-building purposes, to-wit:

> "All lands now belonging, or that may hereafter belong, to the State of Louisiana, and embraced within the limits of the Levee District as herein constituted shall be, and the same are hereby granted, given, bargained, donated, conveyed, and delivered unto the said Board of Commissioners of the Caddo Levee District, whether the said lands or parts of lands were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been or may hereafter be forfeited, or bought in by or for, or sold to the State at tax sale for non-payment of taxes,"

And provided further in that section that, where the State had acquired any property at tax sale, the owner should have six months in which to redeem it, and that, "after the expiration of the said six months, it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, all lands hereby granted or intended to be granted and conveyed to the said Board whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners or by the Presi-

dent thereof, and thereafter the said President of the said Board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, and when the said conveyances are so recorded the title to the said lands, with the possession thereof, shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees." It further authorized said Board to sell, mortgage, pledge, or otherwise dispose of said lands in such quantities and at such times and at such prices as to the Board might seem proper.

By Act 160 of 1900 the Legislature of Louisiana amended Section 9 of Act No. 74 of 1892 by omitting the words which had apparently limited the grant by the State to the Caddo Levee District to lands granted by the Congress of the United States, or which had been forfeited or sold for taxes to the State, and, by the latter act, included all lands, embracing the beds of navigable lakes and streams, which had always belonged to the State by virtue of her sovereignty since her admission into the Union.

The Auditor and Register of the State of Louisiana certified large quantities of land by proper instruments of conveyance, as required by Section 9 of Act No. 74 of 1892, which were duly recorded in the Recorder's Office of the Parish of Caddo, but did not include in any conveyance to that Levee Board what was known as Cross Lake—an area of eleven hundred acres of land which had been the bed of what was formerly a navigable lake, now rapidly drying up.

In August, 1895, the Commissioners of the Caddo Levee District, without having received any conveyance of this

land, which had been a part of the bed of Cross Lake, from the Auditor or Register of the State of Louisiana, assumed to sell the same to the defendants' authors for eleven hundred ($1,100.00) dollars, or ten cents per acre, which, however, has never been actually paid and received by the Board, owing to litigation and disputes which arose over the question of title, and which litigation it is not necessary to discuss for the purposes of this motion to dismiss for want of jurisdiction.

In March, 1906, this suit was brought by the State of Louisiana, through her Attorney General, to annul the pretended title of the defendant and to recover this body of land. The grounds relied on by the State are, substantially, that the grant of this land to the Levee Board was subject to the condition that the title should vest in the Board only upon the execution by the Auditor, and Register of the State Land Office, and the registration in the parishes where the land lies, of deeds of conveyance thereto, and that the attempt to convey them by the Levee Board without its having received a title conveyed no title to the defendants or their authors.

The further allegation was made that the lands in question were not included in the terms of the Act of 1892, being lands which belonged to the State of Louisiana by virtue of her sovereignty, but that, even if so included, no deed thereto having been executed by the Auditor and Register, the defendant had acquired no title thereto through the conveyance attempted by the Levee Board.

It was further alleged that, should the Court find that said lands were within the terms of said act, and that the Caddo Levee Board acquired the same without having received a deed thereto, the said conveyance by the Board

was a disguised donation, the price purporting to have been paid being only ten cents per acre, whereas the land was worth two dollars per acre; that, should these grounds not be sustained, the attempted conveyance should be decreed to be of no effect, because it purports to be for cash, whereas no price whatever was paid for the lands; and that, should none of the grounds thus relied on be found good, the alleged sale should be annulled for lesion beyond moiety. (Transcript, pp. 1 to 5.)

Defendant excepted, that the allegations are inconsistent, and that they disclosed no cause of action, and pleaded *res judicata*. The exceptions were overruled, and it answered that the lands claimed were included in the grant contained in Act No. 74 of 1892, and the amendatory act thereto (Act 160 of 1900); denied that the land was once a part of a navigable lake or stream; averred that it was swamp and overflowed lands, enuring to the State as such, and by it transferred to the Levee Board by said acts, without the necessity of any deeds of conveyance from the Register of the State Land Office or the Auditor of the State; that the price paid was sound; that the transaction was a sale, and not a donation, and that the attack on the ground of lesion beyond moiety was barred by the prescription of four years; it denied that the sale was a donation in disguise, or that the purchase price had not been paid; alleged its possession and payment of taxes since 1895, and pleaded the prescription of five and ten years. (Transcript, pp. 8 and 9.)

The defendant further alleged "that, by the terms of said Act 74 of 1892, and the amendatory act thereto, the said lands were given, granted, donated and delivered to said Caddo Levee Board, and, acting on the faith of which,

the same was purchased by your defendants' vendors, W. B. Jacobs *et als*., and to permit the said State now to retake said lands would be in violation of its contract embraced in said acts, and your defendants purchased, relying thereon and the decisions of the Supreme Court of the State, thus impairing the obligation of its contract, in violation of the Constitution of the United States and of the State of Louisiana." (Transcript, p. 9.)

This is the only suggestion of a Federal question in the pleadings.

There was judgment for the defendant gun club in the District Court, and the State appealed to the Supreme Court of the State, where the judgment of the District Court was reversed and judgment given in favor of the State, from which judgment this writ of error to this Court was sued out.

The statement of the case, and the opinion of the Supreme Court of the State of Louisiana, are given in full in the transcript, on pages 100 to 107. The Supreme Court of Louisiana, as is shown by the opinion, decided the case on the construction of Section 9 of Act 74 of 1892, and of Act 160 of 1900, which, in this respect, are the same, holding that title to this area and the power to sell the same vested in the Caddo Levee Board only on its receiving a deed or act of conveyance from the Register and Auditor of the State of Louisiana, and recording the same in the Parish of Caddo, where the land lies; and, so holding, found it unnecessary to pass on any of the other questions raised in the case. The Court found that this construction had been placed by it upon similar provisions found in other acts of the Legislature of Louisiana, creating other Levee Boards, in the cases of *McDade vs. Levee Board*,

109 La. 625; *St. Paul vs. Louisiana Cypress Lumber Co.*, 116 La. 585; and had been referred to, without disapproval, in *Williams vs. Whitecastle Lumber Co.*, 114 La. 450. (Transcript, p. 106.)

In the *St. Paul case* (116 La. 593) the Supreme Court of Louisiana said, when referring to the argument of counsel similar to that made here:

> "This argument of learned counsel for defendant would have force were it not that this Court has taken a contrary view in a decision recently handed down. As this decision relates to real property, it can be set aside upon most convincing grounds. It has become a rule of property.
>
> "Under the interpretation in decisions, cited, *infra*, the clause is not directory, but mandatory."

Federal Question.

It will be seen from the quotation from the answer above given, and also by reference to the answer printed in the transcript, pages 8 and 9, that the only allusion to the Federal laws or Constitution is in the paragraph above quoted, where it is asserted that, "to permit the said State now to retake said lands, would be in violation of its contract embraced in said acts, and your defendants purchased, relying thereon and the decisions of the Supreme Court of the State, thus impairing the obligation of its contract, in violation of the Constitution of the United States and of the State of Louisiana."

In this there is no reference to any subsequent Act of the Legislature or of any municipal or other authority of the State of Louisiana being guilty of attempting to take away the property of plaintiff in error, and the sentence just quoted can only mean that, for the Courts to permit

the State, through this suit, to recover this property, would be a violation of its constitutional rights.

We respectfully submit that no Federal question was raised by the averment, nor decided by the Court, nor was necessary for its decision; that the interpretation or construction of a State statute by a State Court, under which a contract has been attempted to be made, is in no sense a Federal question, whether that decision be correct or not; that it is only where it is claimed that, by some subsequent Act of the State, through its Legislature, or a municipal body exercising delegated powers, or some other State authority other than a mere decision of its highest Court interpreting a State statute, under which rights are claimed and denied, that a Federal question can arise. The following authorities amply support this contention:

> The authority conferred by a State on its Courts to hear and determine cases is not the kind of authority referred to in Section 709 of the Revised Statutes of the United States, which declares that this Court has the right to review a judgment of the highest Court of a State "where is drawn in question the validity of a statute of or *an authority exercised under any State.*" *Bethell vs. Demaret,* 10 Wall. 537.

> A decision on questions of compliance with the Constitution or statutes of a State does not involve a Federal question. *Baldwin vs. Kansas,* 129 U. S. 52; *Missouri vs. Harris,* 144 U. S. 210; *Sage vs. Louisiana Board of Liquidation,* 144 U. S. 647; *Powell vs. Brunswick Co.,* 150 U. S. 433; *McElvaine vs. Brush,* 142 U. S. 155.

> Where a State law is admitted to be valid, and the only question is whether it has been correctly construed, this Court has no jurisdiction. *Congdon, etc.,*

Mining Co. vs. Goodman, 2 Black. (U. S.) 574; *Scott vs. Jones*, 5 How. 343; *Lessieur vs. Price*, 12 How. 59; *Commercial Bank vs. Buckingham*, 5 How. 317; *Smith vs. Hunter*, 7 How. 738.

A decision of the State Court resting upon the construction, and not upon the validity, of a statute of the State, does not present a Federal question. *Grand Gulf Railroad, etc., Co. vs. Marshall*, 12 How. 165; *Ferry vs. King County*, 141 U. S. 668; *Snell vs. Chicago*, 152 U. S. 191.

The jurisdiction of the Supreme Court of the United States cannot be sustained on the ground that the *judgment* of the State Court impairs or fails to give effect to a contract. *Missouri, etc., R. Co. vs. Rock*, 4 Wall. 177; *Knox vs. Exchange Bank*, 12 Wall. 379; *People vs. Central R. Co.*, 12 Wall. 455; *Hopkins vs. McLure*, 133 U. S. 380; *Morley vs. Lake Shore, etc., R. Co.* 146 U. S. 162; *Newport Light Company vs. Newport*, 151 U. S. 527; *New Orleans Waterworks Company vs. Louisiana*, 185 U. S. 336, 350, 351.

This Court has already held that "we are not authorized by the Judiciary Act to review the judgments of the State Courts, because their judgments refuse to give effect to valid contracts, or because those judgments, in their effect, impair the obligation of contracts. If we did, every case decided in a State court could be brought here, when the party setting up a contract alleged that the Court had taken a different view of its obligation to that which he held." *Knox vs. Exchange Bank*, 12 Wall. 379, 383; see, also, *St. Paul, etc., R. Co. vs. Todd County*, 142 U. S. 282.

It has also been held that a decision of a State Supreme Court that certain railroad aid bonds were void under the

Constitution and statutes of the State in force at the time the bonds were issued, there being no subsequent legislation on the subject, is not subject to review on the ground that the contract was impaired by the decision of the State Court. *Turner vs. Wilkes County*, 173 U. S. 461.

This Honorable Court has no jurisdiction to review a judgment of a State Court on writ of error, when such jurisdiction is based upon an alleged impairment of a contract by reason of the alteration by a State Court of a construction theretofore given by it to such contract, or to a particular statute or series of statutes in existence when the contract was entered into. *Bacon vs. Texas*, 163 U. S. 207; *National Mut. Bldg., etc., Ass'n. vs. Brahan*, 193 U. S. 647.

> When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State Court does not deprive the unsuccessful party of his property without due process of law. *Walker vs. Saurinet*, 92 U. S. 90; *Head vs. Amoskeag Mfg. Co.*, 113 U. S. 9; *Morley vs. Lake Shore, etc., R. Co.*, 146 U. S. 162; *Bergeman vs. Backer*, 157 U. S. 655; *Central Land Co. vs. Laidley*, 159 U. S. 103.

It is true that after this case had been heard and decided in the Supreme Court of Louisiana, in a petition for a rehearing it was alleged that Act No. 171 of the Acts of 1902 of the General Assembly of the State of Louisiana, which had not been invoked by plaintiff or defendant, whereby the State undertook to repeal the grant of the Cross Lake lands to the Levee Board, and to direct them to be sold by the Governor for the benefit of the Caddo Levee District, "was an act impairing the obligations of a contract

and in contravention of the Constitution of the United States, as specially pleaded in the answer." (Transcript, p. 111).

By reference to the answer, however (Transcript, p. 9), it will be found that no such plea is made, and that the statement that Act No. 171 of 1902 is objectionable for the reasons "specially pleaded in the answer" is without foundation. The petition for a rehearing further stated that "the Court erred in not holding that the acts and doings of the Caddo Levee District and of the Legislature and of the officials of the State in regard to the Cross Lake lands show on their face a collusion and conspiracy to defeat the title of the defendant to the lands sold to it by the Caddo Levee District, so as to enable the State to escape from the obligation of her grant to the Caddo Levee District, under which this defendant holds title, and to enable the Caddo Levee District to avoid a title which had been judicially declared valid, and yet to obtain the entire benefit of the sale of such lands by the State, all in contravention of the obligation of the State's contract and in violation of the Constitution of the United States, as specially pleaded in the defendant's answer." (Transcript, p. 111.)

By reference to the answer (Transcript, pages 8 and 9) it will be found that no such matters were set up in the answer, and the statement that the same were specially pleaded in defendant's answer is without foundation. The same and other similar matters are reiterated in the assignment of errors (Transcript, pages 112-113) or mentioned as having been pleaded in defendant's answer, whereas, in truth and fact, they were not so pleaded, as the answer shows.

We cite the following authorities:

A Federal question, when not presented prior to the decision by the Court of last resort of the State, comes too late. *Bolln vs. Nebraska*, 176 U. S. 83; *Citizens' Sav. Bank vs. Owensboro*, 173 U. S. 636; *Winona, etc., Land Co. vs. Minnesota*, 159 U. S. 540; *Sayward vs. Denny*, 158 U. S. 180; *Morrison vs. Watson*, 154 U. S. 111; *Miller vs. Texas*, 153 U. S. 535; *Duncan vs. Missouri*, 152 U. S. 377; *Powell vs. Brunswick County*, 150 U. S. 433; *Schuyler Nat. Bank vs. Bollong*, 150 U. S. 85; *Loeber vs. Schroeder*, 149 U. S. 580; *Brown vs. Massachusetts* 144 U. S. 573; *Chappel vs. Bradshaw*, 128 U. S. 132; *Brooks vs. Missouri*, 124 U. S. 394; *Spies vs. Illinois*, 123 U. S. 131.

It is not sufficient to make the claim for the first time in the petition for a writ of error. *Johnson vs. New York L. Ins. Co.*, 187 U. S. 495; *Simmerman vs. Nebraska*, 116 U. S. 54; *Meyer vs. Richmond*, 172 U. S. 100; *Winona, etc., R. Co. vs. Plainview*, 143 U. S. 371.

Or in a petition for rehearing after judgment. *Mutual L. Ins. Co. vs. McGrew*, 188 U. S. 309; *Turner vs. Richardson*, 180 U. S 92; *Capital Nat. Bank vs. Cadiz First Nat. Bank*, 172 U. S. 425; *Meyer vs. Richmond*, 172 U. S. 82; *Miller vs. Cornwall R. Co.*, 168 U. S. 131; *Zadig vs. Baldwin*, 166 U. S. 487; *Pim vs. St. Louis*, 165 U. S. 273; *Sayward vs. Denny*, 158 U. S. 180; *Loeber vs. Schroeder*, 149 U. S. 580; *Bushnell vs. Crooke Min. etc., Co.*, 148 U. S. 682; *Winona, etc., R. Co. vs. Plainview*, 143 U. S. 371; *Leeper vs. Texas*, 139 U. S. 462; *Texas, etc., R. Co. vs. Southern Pac. R. Co.*, 137 U. S. 54; *Susquehana Broom Co. vs. West Branch Broom Co.*, 110 U. S. 57.

An assignment of errors cannot be availed of to import questions into a cause which the record does not

show were raised and passed on in the court below. *Missouri Pac. R. Co. vs. Fitzgerald,* 160 U. S. 556; *Cornell vs. Green,* 163 U. S. 75.

The Supreme Court acts only upon the record of the Court below, and a petition for a writ of error forms no part of the record. *Warfield vs. Chaffe,* 91 U. S. 690; *Susquehana Broom Co. vs. West Branch Broom Co.,* 110 U. S. 57; *Sayward vs. Denny,* 158 U. S. 180; *Butler vs. Gage,* 138 U. S. 52.

The right, title, privilege or immunity relied on must not only be specially set up or claimed, but at the proper time and in the proper way. *Mutual Life Ins. Co. vs. McGrew,* 188 U. S. 291; *Hayward vs. Denny,* 158 U. S. 180; *Morrison vs. Watson,* 154 U. S. 111; *Miller vs. Texas,* 153 U. S. 535; *Maxwell vs. Newbold,* 18 How. (U. S.) 515; *Hoyt vs. Sheldon,* 1 Black (U. S.), 518.

But the result will be the same if this Court should find that it was sufficient for defendant to suggest these questions in the motion for rehearing in the Supreme Court of Louisiana and in the petition for writ of error to this Court, for the reason that the Supreme Court of Louisiana did not pass upon them, and it was *unnecessary* that it should do so, for the reason that it decided the case upon grounds broad enough to support its decision and judgment without reference to Act No. 171 of 1902, or other proceedings of the Levee Board or State officials referred to in a general way in the assignment of errors. The State of Louisiana did not invoke the repealing Act, No. 171 of 1902, for the reason that it could have had no effect if defendant had acquired a valid title to the property sued for, and that act absolutely had no influence whatever upon the

decision of the case by the Supreme Court of Louisiana, which decision was based entirely upon the construction of the original grant to the Caddo Levee Board as contained in Section 9 of Act 74 of 1892, which had been repeatedly construed by that Court to like effect in previous decisions, insomuch that, in one of them, the Court had said that this construction had become a rule of property and could not be lightly changed.

The following authorities support our contention that where the State Court has decided a question upon sufficient grounds independent of any subsequent law, there is no Federal question involved:

> If the judgment of the State Court gives no effect to the subsequent law of the State, and the State Court decides the case upon grounds independent of that law, a case is not made for review upon any ground of the impairment of a contract. *Bacon vs. Texas,* 163 U. S. 207; *New Orleans Water Works Co. vs. Louisiana Sugar Refining Company,* 125 U. S. 18; *Kreiger vs. Shelby R. Co.,* 125 U. S. 39.

> The case is not altered by the fact that the State has passed an act which the defendants assert impairs the obligation of their contract, so long as the Court in deciding their case holds that they never had a contract because they never had complied with the provisions of the original statute, and so long as it gives judgment wholly and solely without reference to the subsequent act, and without holding, or in any manner giving effect to any provision thereof. *Bacon vs. Texas,* 163 U. S. 207.

In *Rutland Railroad Co. vs. Central Vermont Railroad Co.,* 159 U. S. 630, it is stated that where a State Court in

rendering judgment decides against the plaintiff in error upon an independent ground, not involving a Federal question, and broad enough to support the judgment, this Court will dismiss the writ of error, without considering the Federal question.

To the same effect are *Capital Nat. Bank vs. Cadiz First Nat. Bank*, 172 U. S. 425; *Harrison vs. Morton*, 171 U. S. 38; *Pierce vs. Somerset R. Co.*, 171 U. S. 641; *Wade vs. Lawder*, 165 U. S. 624.

We submit that the motion in support of which this brief is written should prevail.

Respectfully submitted,

WALTER GUION
Attorney General of Louisiana.

W. P. HALL,
Of Counsel.

23

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 46

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR ON DEFENDANT'S MOTION TO DISMISS OR AFFIRM.

EDGAR H. FARRAR,
JOHN D. WILKINSON,
Counsel.

J. G. HAUSER, "The Legal Printer," 620-22 Poydras Street, N. O.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 217.

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR ON DEFENDANT'S MOTION TO DISMISS OR AFFIRM.

I.

We submit that the Court will not hear this motion to dismiss or affirm at this time, but will continue it for hearing with the merits.

This record was filed in this Court May 6, 1909. It is now No. 217 on the docket of the present term, and will most

probably be reached on the merits before the term closes. After nearly two years of quiescence, and as the case is approaching a hearing, the State wants this Court now to consider and pass on the whole case. We submit that the time of this Court is too precious to give the same case a double hearing.

II.

STATEMENT OF CASE.

Article 214 of the Constitution of Louisiana of 1879 provides:

> "The General Assembly may divide the State into levee districts and provide for the appointment or election of levee commissioners in said districts, who shall, in the method and manner to be provided by law, have supervision of the erection, repairs and maintenance of the levees in said districts," etc.

From time to time the State created numbers of such districts, and by Act No. 74 of the Acts of 1892 created the Caddo Levee District and defined its limits.

By Section 2 of this act the control and management of this district was vested in a Board of Commissioners to be appointed by the Governor.

By Section 4 of the act it was provided:

> "That the Board of Commissioners of the Caddo Levee District created by this act shall be and is hereby declared to be and is **created a corporation and body politic, and invested with all the powers, privileges, rights and immunities conferred by law upon**

other corporations of a like character within this State. They shall have and possess authority to sue and be sued; to stand in judgment in the name and style of the Commissioners of Caddo Levee District of Louisiana, and all proceedings in law against the said corporation shall be served upon the president or upon the secretary of the Board of Commissioners at its place of domicile, and all suits or proceedings taken by them or in behalf of the said corporation shall be brought by the president in the name of the board. The domicile of the Caddo Levee District shall be in the City of Shreveport, Parish of Caddo, State of Louisiana, at which domicile shall be kept the office of and all the books, records and archives of the corporation; at which place service of process shall be made upon the president or the secretary. **The said board shall have authority to buy and hold, or to sell and transfer titles to property; to make and execute contracts, and to do and perform any and all acts necessary to carry out the objects of this act—viz.:** The thorough and perfect protection of the lands of this district from damage by flood and for the perfect drainage of the same."

By Section 9 of said act it was provided as follows:

"SEC. 9. *Be it further enacted, etc.,* That, in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable the said board to assist in developing, establishing and completing the levee system in the said district, **all lands now belonging or that may hereafter belong to the State of Louisiana and embraced within the limits of the Levee District as herein constituted shall be, and the same are hereby, granted, given, bargained, donated, conveyed and delivered unto the said Board of Commissioners of the Caddo Levee District, whether the said lands or parts of lands**

were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been or may hereafter be forfeited, or bought in by or for, or sold to the State at tax sale for nonpayment of taxes; where the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by or sold to the State for nonpayment of taxes may at any time within six months next ensuing after the passage of this act redeem the said lands, or all of them, upon paying to the Treasurer of this State all taxes, costs and penalties due thereon, down to the date of the said redemption; **but such redemption shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District.** After the expiration of the said six months it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, all lands hereby granted or intended to be granted and conveyed to the said board, **whenever, from time to time, the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners or by the president thereof,** and thereafter the said president of the said board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, and when the said conveyances are so recorded the title to the said lands, with the possession thereof, shall from thenceforth

vest absolutely in the said Board of Commissioners, its successors or grantees. The said lands shall be exempted from taxes after being conveyed to, and while they remain in the possession or under the control of the said board. **The said Board of Levee Commissioners shall have the power and authority to sell, mortgage and pledge or otherwise dispose of the said lands in such quantities, and at such times, and at such prices as to the board may seem proper.** But all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Caddo Levee District, and shall be drawn only upon the warrants of the president of the said board, properly attested as provided in this act."

Among the lands owned by the State within the district thus constituted and covered by the grant aforesaid was a body of land known as the "Cross Lake lands," so called because they were part of the banks and bed of a shallow lake formed by the overflowing of a low flat or swamp, this overflow being caused by the formation of a raft in the Red River, and when this raft was removed more than forty years ago these lands returned to their original condition and were, like all other alluvial lands in the Red River Valley, subject to overflow in high water. The Cross Lake lands are situated in Township 17 North, Range 14 West; Township 17 North, Range 15 West; Township 18 North, Range 14 West, and Township 18 North, Range 15 West, as appears by the official map of tne United States at page 96 of the printed transcript. When this official survey was made in 1837 and 1838 a large part of the lands forming the bed of the lake was then out of water, and was then platted and surveyed by the United States. Since that time the lake has dried up and practically disappeared, although

in times of high water in Red River these lands are overflowed, and at such times the old lake would be navigable.

These Cross Lake lands were not comprised in the conveyance made by the Register of the Land Office and the Auditor of the State to the Caddo Levee Board, evidently because there was no record in the Land Office as to such lands, and part of them—*i. e.*, that part comprising the bed of the dried-up lake—had never been surveyed.

However, the Caddo Levee Board treated these lands as belonging to it, and by deed dated August 20, 1895, sold part of these lands, amounting to 11,000 acres, to W. B. Jacobs, A. F. Jenkins, W. S. Penick, Jr., and S. J. Enders for ten cents an acre; and by deed dated September 19, 1895, sold the balance of said lands for twenty-five cents an acre to Levi Cooper and Albert H. Leonard. (Rec., pp. 88, 89.)

In other words, the Caddo Levee Board treated the grant to it of all the State's lands situated in the district as an absolute grant to it *in praesenti.* They treated the conveyance from the Register of the Land Office and the Auditor spoken of in the act of 1892 as a mere formality to be complied with on request from them and the absence of such a conveyance as no let or hindrance on their right to sell the lands covered by the grant to them.

That such was the meaning of the law was held by the Supreme Court of the State in the case of *Worden vs. Fisher,* 52 An. 576, decided in January, 1900, in which case the Court interpreted Section 10 of Act No. 46 of the Acts of 1892, incorporating the Red River, Atchafalaya and Bayou Bœuf Levee District. Both of these acts were passed at the same session of the Legislature, and Section 10 of Act No. 46 of 1892, constituting the Red River Board and donat-

ing State lands to it, is practically identical with Section 9 of Act No. 74 of the Acts of 1892, constituting the Caddo Board and donating the State lands to it. This Section 10 of Act 46 is printed in the appendix.

W. B. Jacobs and his associates by public act dated August 28, 1895, conveyed the lands bought by them to the Shreveport Gun Club, and by public act dated September 19, 1895, the Caddo Levee Board ratified and confirmed the conveyance by Jacobs and his associates to the Shreveport Gun Club.

There was another club in Shreveport called the "Shreveport Rod and Gun Club," and it set up a claim that it was entitled to be the purchaser, and not Jacobs *et al.* or the Shreveport Gun Club.

A triangular litigation over this sale grew up between these two clubs and the Caddo Levee Board. In this litigation the Caddo Levee Board sought to set aside and annul the sale made to Jacobs and his associates, and pleaded, among other things, that the sale was void for lesion beyond moiety. This whole controversy was decided by the Supreme Court of Louisiana in the case of *Shreveport Rod & Gun Club vs. Board of Commissioners*, 48 An. 1081. The judgment maintained the title of Jacobs and his associates, and rejected the claim of the Caddo Levee Board. This decision was rendered in June, 1896.

Thereafter, on December 18, 1896, the Shreveport Gun Club and all the persons who were stockholders in it conveyed this land to the "Cross Lake Shooting and Fishing Club," the defendant in this case.

When the deed was first made to Jacobs and others, and to the Shreveport Gun Club, checks were given to the board for the purchase price. Controversy about the sale

immediately arose, and the Levee Board, although it had executed an authentic act of sale, and had recited the receipt of the purchase price, refused to collect these checks or to receive the money on them.

After the decision of the Supreme Court above recited the board agreed, with the approval of the State Auditor, to have a special deposit made of the purchase price, to remain so deposited until the board had perfected the title to the lands sold. What was meant by perfecting the title was to have the board make a request of the Auditor of the State and the Register of the Land Office to make to the board a conveyance of the lands sold.

The board refused to make this request, and, when a demand was drawn up for presentation to the State Register, asking that unsurveyed lake lands be deeded by the State to the Levee Board, the demand was deliberately amended so as to strike out from the request the Cross Lake lands. (Rec., p. 87, extract from minutes of Caddo Levee Board of date November 15, 1900.)

Prior to the passage of this resolution the Legislature of Louisiana, by Act No. 160 of the Acts of 1900, amended and re-enacted Section 9 of Act No. 74 of 1892, creating the Caddo Levee Board. This amendment and re-enactment is in the following words:

> "SEC. 2. *Be it further enacted, etc.*, That Section 9 of said Act No. 74 of 1892 be amended and re-enacted so as to read as follows:
>
> "That, in order to provide additional means to carry out the purpose of this act, and to furnish resources to enable the said board to assist in developing, establishing and completing the levee system in the said district, all lands now belonging, or that may

hereafter belong, to the State of Louisiana, and embraced within the limits of the levee district as herein constituted, shall be, and the same are hereby, granted, given, bargained, donated, conveyed and delivered unto the said Board of Commissioners of the Caddo Levee District; but, where the State has, or may hereafter, become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by, or sold to the State for, nonpayment of taxes, may, at any time within six months next ensuing after the passage of this act, redeem the said lands, or all of them, upon paying to the Treasurer of this State all taxes, costs and penalties due thereon down to the date of the said redemption; but such redemption shall be deemed and be taken to be sales of land by the State, and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, all lands hereby granted or intended to be granted and conveyed to the said board whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners, or by the president thereof; and thereafter the said president of the said board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, and when the said conveyances are so recorded the title to the said lands, with the possession thereof, shall from thenceforth vest absolutely in the

> said Board of Commissioners, its successors or grantees. The said lands shall be exempted from taxes after being conveyed to, and while they remain in the possession or under the control of, the said board. The said Board of Levee Commissioners shall have the power and authority to sell, mortgage and pledge or otherwise dispose of the said lands in such quantities, and at such times and such prices, as to the board may seem proper. But all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Caddo Levee District, and shall be drawn only upon the warrants of the president of the said board, properly attested as provided in this act."

A comparison of this amendment with the original act shows that the two sections are identical in every respect except that in the amended act there are omitted the words

> *"whether the said lands, or parts of lands, were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been, or may hereafter be, forfeited, or bought in by or for, or sold to, the State for taxes."*

If this clause in the original act was a limitative clause confining the lands conveyed to the Levee Board to lands granted by the Congress to the State and to lands acquired for taxes, then by this amendment this limitation was stricken out and the grant was made an unlimited grant of

> "all lands now belonging, or that may hereafter belong, to the State of Louisiana, and embraced within the limits of the levee district."

What was the object in passing this amendatory act? Clearly, to leave out the supposed limitative clause, if it

could be construed as such, and to make clear what lands were covered by the grant. This particularly appears from the title to the act, which states, as provided by the Constitution, the object and purpose of the act to be:

> "To amend and re-enact Sections 1 and 9, * * * and more fully designating the territorial boundary of said district, *and what lands the State of Louisiana gives, grants and conveys to the Board of Commissioners of said Levee District.*"

The act was evidently passed in the interest of, and for the use and benefit of, the Caddo Levee Board. It is a matter of geography, of which this Court will take judicial notice, that there were other shallow lakes in the Caddo Levee District, and the Caddo Levee Board wanted a clear and undisputed title to the lands forming the beds of those lakes, and by this statute it got such title without any shadow of dispute.

In December, 1901, after the above statute was passed, and after the board had, by the resolution of November 15, 1900, made request for the conveyance to it of all "unsurveyed lake lands," *specially excluding the Cross Lake lands* (Rec., p. 87), Jacobs and Levi Cooper presented a written proposition to the Levee Board to pay it $3,500 additional if it would complete the title to the gun-club lands in Cross Lake, and this proposition was accepted, and the president was authorized to take proper steps to perfect the title under said proposition. (Rec., p. 87.)

In this condition of affairs the Legislature of Louisiana adopted Act No. 171 of the Acts of 1902, which is copied in full in the appendix.

The first section of this act describes exactly the lands sold by the Caddo Levee Board to Jacobs and others, and,

asserting that they belong to the State, directs the Register of the Land Office to sell the same at not less than $5 per acre.

The third section directs that the proceeds arising from the sale of these lands shall be placed in the State Treasury *"to the credit of the Board of Commissioners of the Caddo Levee District* FOR THEIR USE AND BENEFIT."

The fourth section repeals Act No. 74 of 1892 and Act 160 of 1900 in so far as they may affect any of the lands described herein, and gives as the reason or justification of this repeal the following:

> *"The same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them, by any instrument of conveyance from the State as required by said act to complete the title to the same."*

Clausulae inconsuetae semper inducunt suspicionem. Here was an attempt on the part of the Legislature to interpret its own grant of particular lands, when it knew that the Caddo Levee Board had, under the grant made to it, sold these lands to a third person, and had further agreed to perfect the sale already made; and when it knew that the Supreme Court of the State had declared that such sale was valid and binding on the Caddo Levee Board; and when it knew that the Supreme Court of the State had, in the case of *Worden vs. Fisher*, 52 An. 576 (decided before it adopted Act No. 160 of 1900), interpreted a grant made to a levee board in identically the same language as that made in Act No. 74 of 1892, and Act No. 160 of 1900, as being complete so as to vest title in the levee board without any formal conveyance.

This act is a disreputable trick and fraud. It was either passed for the purpose of preventing the Caddo Levee Board from carrying out its agreement with Jacobs, made December 18, 1901 (Rec., p. 87), or it was passed in collusion with that board to enable it to avoid that contract and the final decree of the Supreme Court of Louisiana declaring the sale to Jacobs a valid sale. This position is confirmed by the fact that the whole beneficial interest of the Caddo Levee Board in the said lands is maintained by the provision of said statute, which directs the proceeds of the sale of these lands to be deposited in the State treasury *"for their use and benefit."*

It does not appear on this record, but it is a matter of fact which the learned Attorney-General will not deny, that the Cross Lake Shooting and Fishing Club filed a bill in the United States Circuit Court for the Eastern District of Louisiana against the State Auditor and obtained an injunction against his execution of the said Act No. 171 of 1902. This injunction was made perpetual, reserving the right of the State to sue for these lands in a direct action. The Court could not bind the State in that suit because she was no party to it, and could not be made a party against her consent.

The present suit is the suit brought by the State in accordance with the reservation contained in the judgment of the United States Circuit Court.

The petition claims that the State is the owner of the lands in question, *"possessing absolute title to the same."*

It avers that these lands were not included in the grant made to the Caddo Levee Board by Act No. 74 of 1892

> "for the reason that said lands are the bed of a once navigable lake, known as 'Cross Lake,' which has be-

> come dry by reason of the recession therefrom of the waters which formerly covered the same; and that the same are lands which belong to your petitioner by virtue of her sovereignty, and are such as came to her as a sovereign State on her admission into the Union, and are not lands belonging to your petitioner which were originally granted to her by the Congress of the United States, or such as had been forfeited or bought in for taxes."

The Court will note that no mention is made in this petition of the act of 1900, which, as shown above, was passed for the purpose of taking the supposed limitative clause out of the act of 1892, on which supposd limitative clause this paragraph of the petition is based.

We have no concern in this case with this point, as it was expressly excluded from consideration by the Supreme Court of Louisiana in deciding the case. Nor have we any concern with any of the grounds set up by the State except the one on which the Supreme Court acted, and that is the second ground set up in the petition—*i. e.*, that, even if said lands had belonged to the class of lands designated and described in Section 9 of Act No. 74 of 1892 as intended to be conveyed by petitioner to said Board of Commissioners, the same had never at any time been conveyed by the Auditor and Register of the Land Office to said board by any instrument of conveyance on behalf and in the name of the State, and no such conveyance of said lands had ever been recorded in the office of the Recorder of the Parish of Caddo, where the lands are located, so as to give power and authority to said board to sell or otherwise dispose of said lands.

The petition then avers and sets up the sale of said lands by the board on August 28, 1905, by authentic act to

Jacobs and others, the act of ratification and confirmation passed by the board on September 19, 1895, to the Shreveport Gun Club, and the sale of December 18, 1906, to the Cross Lake Shooting and Fishing Club. It then sets up that these acts conveyed no title because the Caddo Board had no authority, power or right to convey or dispose of the title of the State to these lands.

It is then averred, *in the alternative*, that, if the board had the legal right to sell these lands, the sale conveyed no title because it was a disguised donation of the lands to Jacobs and others, because the lands were worth at that time two dollars per acre, and were disposed of at ten cents per acre.

It is further averred *in the alternative* that, if the board had the right to sell the lands, and the sale was not a disguised donation, then the sale was void for lesion beyond moiety.

As stated above, the propositions raised by these two alternative prayers are not before this Court because they, as well as the one in regard to sovereignty lands, were excluded from consideration by the opinion of the Supreme Court, to reverse which this writ of error is taken.

We may say, however, in passing, that the State was absolutely without right or authority to raise either of these questions. It had created the board which sold these lands with corporate life and power, with authority to sue and be sued, and had granted it these lands with

> "power and authority to sell, mortgage and pledge, or otherwise dispose of the said lands, in such quantities, and at such times and such prices, as to the board may seem proper."

This point was ruled on by the Supreme Court of Louisiana in the case of *State vs. Tensas Delta Land Co.*, 52 Sou. Rep. 216, where the State sued to set aside a sale of lands made by the Tensas Basin Levee District, where, among others, these identical grounds were set up.

Defendant in the present case filed three separate exceptions:

FIRST. That the plaintiff's demands are inconsistent and contradictory, and that the State had no right to urge the demands to set aside the sale on the ground of lesion or of a donation in disguise.

SECOND. A plea of no cause of action, which is the same as a general demurrer at common law.

THIRD. The plea of *res adjudicata*, resulting from the judgment of the Supreme Court in the case of *Shreveport Gun & Rod Club vs. Commissioners, etc.*, 48 An. 1081, above referred to.

These exceptions were overruled.

The defendant then answered. (Rec., p. 8.)

This answer admits that defendant is in possession under the chain of title set up in the State's petition; denies that the State had any right or interest in the property because the State, by Act 74 of 1892, and the amendatory act thereto, specially transferred said land to the Caddo Levee Board, which became the sole owner thereof, and entitled to sell the same; denies that the lands were ever the bed of a navigable lake, but avers that they were swamp and overflowed lands, inuring to the State as such, and by it transferred to the Caddo Board by the above-named acts without the necessity of any deeds of conveyance from the Register

of the Land Office and Auditor; denies there was any lesion in the sale to Jacobs *et al.*, and pleads the prescription of four years in bar of such claim; denies that the sale to Jacobs *et al.* was a donation in disguise, or that the price was not paid, and pleads the prescription of five and ten years in bar of this claim; avers that, with the knowledge and consent of the State, the Caddo Board, before any so-called conveyances were executed by the Register or Auditor, took possession of all the swamp and overflowed lands, as well as of all other lands of the State, in said district, and proceeded to sell the same to actual purchasers, and the plaintiff made no protest or objection, but acquiesced therein, and specially ratified such sale by said board, and is now estopped from contesting such sales so made; avers that, by the terms of said Act 74 of 1892, and the amendatory act thereto, the said lands were given, granted, donated and delivered to said Caddo Levee Board, and, acting on the faith of which, the same were purchased by defendant's vendors, W. B. Jacobs *et al.*, and to permit the said State now to retake said lands would be in violation of its contracts embraced in said acts, *thus impairing the obligation of its contract, in violation of the Constitution of the United States and of the State of Louisiana.*

The answer further renewed the plea of *res adjudicata.*

The lower Court rendered judgment for the defendant, rejecting the State's demand.

That Court held:

FIRST. That the lands in question were swamp and overflowed lands, and, hence, were acquired by the State under the acts of Congress of 1849 and 1850, and, hence, were within the grant made by Act 74 of 1892.

SECOND. That, if they were lands acquired by the State as a sovereign, they were conveyed to the Levee Board by Act 160 of 1900, and the title of the Levee Board acquired by that act inured to the benefit of its previous vendors.

THIRD. That Act No. 171 of 1902, which was set up by the State, could not operate so as to affect or defeat the defendant's title, because it would impair the obligation of the State's contract. (Rec., p. 19.)

FOURTH. That the acts of 1892 and 1900 were grants *in praesenti* of the lands in question by the State to the Levee Board, and that no Register and Auditor's deed was required to vest the title except as to lands acquired by the State at tax sales.

FIFTH. That, having parted with her title to the Levee Board, the State had no authority or right to question the sale made by that board under the powers granted to it to sell and dispose of the property.

The State appealed, and the Supreme Court, one of the Justices dissenting and another recused, reversed the judgment.

In its statement of the case (Rec., p. 103) the Court found as a fact that the board had in December, 1901, accepted the proposition of Jacobs to perfect his title to the lands, and had authorized the president to take proper steps to perfect the title. It then continues:

> "The steps taken were, however, ineffectual, and in 1902 the General Assembly passed an act authorizing the Register of the State Land Office to sell the Cross Lake lands at not less than $5 an acre, * * * and further providing," etc.

And here it quotes the repealing clause of the act of 1902, which repeals the grant of these lands to the Caddo Levee Board.

The statement of the Court that "the steps taken, however, were ineffectual," is without any justification or support in the record, which is absolutely silent on the subject. It does not appear what was done or whether anything was done under this resolution. The Court then proceeds:

> "In our opinion, the Levee Board acquired no title to the lands in dispute under the act of 1902, because no deed of conveyance thereto was ever executed by the Auditor and Register, or either of them, and, of course, no such deed was ever recorded; and as, for the same reason, the board acquired no title under Act No. 160 of 1900, the argument that the title acquired under that act inured to the benefit of the defendant has nothing to rest on. This conclusion renders it unnecessary to consider the other issues presented by the pleadings, since, even if it were conceded that the lands were included within the terms of the act of 1892, if it be true that the title did not vest in the board, and that the execution and registry of the deed of conveyance was necessary to accomplish the result, such concession could not affect the judgment to be herein rendered. And so, if it be true that the board acquired no title to the land, then no judgment rendered in a suit to which it may have been a party, but to which the owner of the land was not a party, can support a plea of *res adjudicata* as against the latter; and it is wholly immaterial whether the board attempted to sell the land or to give it away, or whether it received an amount agreed to be paid, or received nothing. Our reasons for the conclusion that the board acquired no title and could, therefore, convey none, predicated on the ad-

> mitted fact that no deed of conveyance to the lands in question has ever been executed by the Auditor or Register, are briefly as follows."

The Court then proceeds to ignore the titles to said acts, which import a present grant, and to slur over and ignore the granting clause in the said statutes contained in the first sentence in this language, **"Shall be and the same are hereby granted, given, bargained, donated, conveyed and delivered,"** by describing this sentence "as a long sentence granting to the board all lands now belonging or that may hereafter belong to the State," etc. The Court having disposed in this manner of these overwhelming words of present grant and delivery **without even quoting them or commenting on their effect,** gives sole and entire force to a subsequent clause, which provides for the execution of deeds by the Register of the Land Office and the Auditor to the lands, at the request of the Levee Board, and for the recordation of such deeds, and which provides that, when such deeds are "so recorded, the title to the said lands, with the possession thereof, shall from thenceforth vest **absolutely** in said Board of Commissioners." The Court then holds in substance, and it is to be supposed in response to the State's claims of **absolute title,** that no title whatever of any kind or nature, complete or incomplete, legal or equitable, actual or contingent, passes to the Levee Board until these conveyances are executed, although they are to be executed on the mere demand of the Levee Board, and although all sums paid into the treasury by the owners of lands acquired by the State for taxes (which these owners were permitted to redeem within six months after the passage of the act) were declared to be the property of the Levee Board, and such redemptions were declared to be sales of the lands by the State.

The Court made no reference whatever to its previous decision in the case of *Worden vs. Fisher,* 52 An. 576, decided prior to the passage of Act 160 of 1900, interpreting an identical statute. **It deliberately and purposely ignored that decision because it was urged upon and thrust at the Court both in oral and in written argument.**

It attempted to justify its opinion by reference to the cases of *McDade vs. Levee Board,* 109 La. 625; *St. Paul vs. La. Cypress Co.,* 116 La. 625, and *Williams vs. White Castle Lumber Co.,* 114 La. 450.

The *McDade case* was decided in 1903, long after defendant's rights arose. The Judge who decided this cause in the lower court was counsel in the *McDade case,* and Mr. Justice Provosty, the dissenting Judge in this case, who was one of the Judges who concurred in the *McDade case,* both say that this point was never discussed at the bar of the court in that case, and this point was made by the Court itself, in a *per curiam* opinion on rehearing, without suggestion by the parties, and either in ignorance or in neglect of their opinion in the case of *Worden vs. Fisher,* decided three years before.

In the *Williams case,* decided in March, 1905, the point in question was not involved directly or indirectly, and there is no reference to either the *McDade* or the *Worden cases.* In the *Williams case* plaintiff claimed title from the Levee Board by a patent, or transfer called a patent, which deed to him was never recorded. Defendant claimed title from the Levee Board by a quitclaim deed, duly recorded, subsequent in date to the patent. The Court applied the fundamental rule of Louisiana law, that an unrecorded deed is no notice to third persons, and held that the recorded quitclaim deed ranked the patent deed.

In the *St. Paul case*, decided in January, 1906, two months before the present suit was brought, the point was absolutely unnecessary to be decided. The Court had already decided that the tax sale of plaintiff's property, under which defendant claimed, was void. That disposed of the case. The Court then, as a work of supererogation, took up another objection to defendant's title—*i. e.*, that no deed of this tax land had been made by the Auditor and Register to the Levee Board. The Court held that this point was good, *because it had already been decided in the Williams case.* Here is this remarkable decision (pp. 593, 594):

> "This argument of learned counsel for defendant would have force were it not that this Court has taken a contrary view in a decision recently handed down. As this decision relates to real property, it can be set aside only upon most convincing grounds. It has become a rule of property. Under the interpretation in decision cited *infra*, the clause is not directory, but mandatory. *(Williams vs. White Castle Lumber Co.*, 114 La. 450 [38 South. 414].)"

As shown above, the *Williams case*, thus cited as establishing a rule of property, *is absolutely silent on any such rule.*

But what about the rule of property established in *Worden vs. Fisher?* That was the rule of property on which defendant's contract rights were to be settled. True, it was decided after defendant's vendor bought under the Act of 1892, but it was decided before the State, by Act No. 160 of 1900, reaffirmed the grant made to the vendor of defendant's vendors, and, according to the settled rule of law that jurisprudence was written into and became part of the act of 1900. It was under that act, and under that

jurisprudence, that the vendors of defendant and the Levee Board contracted in December, 1901, to perfect the title to these lands—a contract which was made impossible of execution because of the repealing act of 1902, which took the lands already contracted for away from the Levee Board.

From this judgment Mr. Justice Provosty entered a vigorous dissent. (Rec., pp. 107-110.)

ARGUMENT.

I.

The defendant in its answer specifically pleaded the contract clause of the Constitution of the United States in defense of the attempt of the State to recover these lands. (Rec., p. 9.)

Under this plea it claimed that, if the lands were, as set up by the State, acquired by her as a sovereign, then such lands accrued to the Levee Board by Act 160 of 1900; that such title inured to the benefit of the defendant, and that, prior to the passage of that act, the jurisprudence of the State had decided that such a grant was a grant *in praesenti*, and the interpretation of that act could not be now changed so as to defeat the defendant's contract, nor could decisions rendered since title was acquired affect decisions rendered before title was acquired.

Under this plea it claimed against the State's demand of absolute title that, if the grant from the State did not convey absolute title, it at least conveyed an inchoate or equitable title, to be thereafter made a legal title at the board's request alone; that this inchoate or equitable title

was capable of conveyance and was conveyed by said board, and that, consequently, Act No. 171 of the Acts of 1902, whereby the State undertook to repeal the grant of said lands, and to direct them to be sold for the benefit of the vendor, was an act impairing the obligation of the State's contract.

Under this plea it claimed that, after the Levee Board had, in December, 1901, accepted the proposition made to it for the use and benefit of the defendant to perfect the title to these lands already sold by it, such proposition and acceptance became a contract which was violated by the Act No. 171 of the Legislature of 1902, which repealed the grant of these lands, and thereby incapacitated the Levee Board to carry out its valid and subsisting contract to perfect title, which it had the full power to do by grant from the State before said disabling act was passed.

Under this plea it claimed that the acts and doings of the Caddo Levee District, and of the Legislature by the passage of said Act No. 171 of 1902, and of the officials of the State, in regard to the Cross Lake lands, were on their face a conspiracy to defeat the title of the defendant to the lands sold to it by the Levee Board, so as to enable the State to escape from the obligation of her grant to the Caddo Levee District, under which the defendants hold, and to enable the Caddo Levee District to avoid a title which had been judicially declared valid, and yet to obtain the entire benefit of the sale of such lands by the State, in violation of the contract clause of the Constitution.

All of these questions were raised on the pleadings and the evidence adduced in the lower court. It appears by the opinion of the Judge (Rec., pp. 12, 19) that the State in-

voked against the defendant this repealing act of 1902, and that he decided that this act impaired the obligation of defendant's contract.

The Supreme Court deliberately ignored all these questions in its opinion.

The defendant in its application for rehearing (Rec., pp. 110, 111) reiterated these Federal questions, and set up that the Court erred in not considering them and deciding them.

We submit that it was legally and justly impossible for the Supreme Court to render a judgment in this case ousting the defendant of the title and possession of these lands, and recovering these lands for itself, without passing on the Federal questions above raised.

By the acts of 1892 and 1900 the State undoubtedly made a grant of these lands to the Levee Board.

That grant was either an absolute grant *in praesenti*, complete in itself—*i. e.*, both legal and equitable—or it was an inchoate grant—*i. e.*, an equitable title—to become perfect—*i. e.*, both equitable and legal—on the mere application of the Levee Board to a State officer for a paper title, this officer having no power or discretion to refuse such paper title, because the lands granted were absolutely designated as all lands within a described district. The Levee Board having been given an absolute and unconditional power to dispose of these lands, it could sell the same and convey whatever title it got by the grant. If it sold before asking the State officer who was compelled by law to give the paper title, then its right to demand the paper title for the benefit of its vendee persisted and remained as long as the grant remained in force, and it could be compelled by any Court to make such demand and obtain such paper title, and when-

ever it got such paper title it would inure instantaneously to the benefit of its vendor. In this case it is not pretended that there was any reason on earth why, after the passage of the act of 1900, a mere demand by the vendor would not have obtained the paper title. After the passage of such act the vendor deliberately declined to make the application for the paper title to these lands (see resolution of November 15, 1900, Rec., p. 87), and deliberately excluded application for a conveyance of these lands from its application for a conveyance of all other similar lake lands. It subsequently repented of this unjust and illegal action, and then agreed for an additional consideration of $3,500 to perfect the title, and directed its officers to take steps to perfect the title. This proposition and its acceptance were a complete contract between the Levee Board and the defendant which could be enforced in court, and which could not be dissolved except by mutual consent.

Now, it is manifest that, if the State had sued to recover *an absolute title* to these lands in this situation of law and fact, she would have gone out of court. She would have had no standing to attack the sale of the lands. The only theory, therefore, upon which she could recover her so-called absolute title was to give effect to the repealing act of 1902, by which she repealed the grant of these lands to the Caddo Levee Board; *and the Supreme Court of Louisiana has, by its unfair analysis and statement of the case, surreptitiously given full effect to the repealing act of 1902, which impaired the obligation of the contract between the Levee Board and the defendant.*

It is axiomatic in this Court that a State Court cannot oust the jurisdiction of this Court by dodging a Federal question which inheres in the case, either by neglecting or

declining to decide the question or by attempting to evade it. This Court will itself look into the case and decide, irrespective of the views expressed by the State Court:

FIRST. What was the contract set up by the party who claims its obligation has been violated?

SECOND. Has the obligation of the contract as found by this Court been violated by subsequent State action, either by legislation or by judicial decision equivalent to legislation, as was held in *Douglas vs. Pike Co.*, 101 U. S. 687, and *Muhlker vs. New York, etc.*, 197 U. S. 570?

Herbert vs. New Orleans, 215 U. S. 175; *McCullough vs. Va.*, 172 U. S. 102; *Jefferson Branch Bk.*, 1 Black, 443; *Bridge Proprietors vs. Hoboken*, 1 Wall. 116, 145; *Green Bay, etc., vs. Patten Paper Co.*, 172 U. S. 58; *Wright vs. Nagle*, 101 U. S. 791, 793; *McGahey vs. Virginia*, 135 U. S. 664, 667; *Douglas vs. Kentucky*, 168 U. S. 488, 501.

This case is very much like the *McCullough case, supra.* In that case the Supreme Court of Virginia sought to avoid the Federal question by holding that the coupon provision of the act of 1871, on which the contract of the couponholders of the Virginia bonds depended, was not valid, and studiously refrained from considering the subsequent legislation of the State of Virginia, which clearly impaired the obligation of that contract. Just as in this case, the Supreme Court of Louisiana has studiously avoided the Federal question by holding, in substance, that no sort or kind of title was conveyed to the Levee Board by the acts of

1874 and 1900, and by making no reference to the contract of December, 1901, to perfect title, and no reference to the repealing act of 1902.

But this Court held in the *McCullough case:*

> "It is true the Court of Appeals in its opinion only incidentally refers to statutes passed subsequent to the act of 1871, *and places its decision distinctly on the ground that that act was void in so far as it related to the coupon contract;* but at the same time it is equally clear that the judgment did give effect to the subsequent statute, and it has been repeatedly held by this Court that, in reviewing the judgments of the Courts of a State, *we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision.*"

So it is equally clear in this case that the Supreme Court, by ousting the defendant from these lands and adjudging them *absolutely* to the State, has, in substance, given effect to the repealing act of 1902, which destroyed the statutes under which the defendant's right to the lands arose.

In addition to the cases cited and discussed in detail in the *McCullough case,* we refer the Court to the following additional cases:

> *Kanauana Water Co. vs. Green Bay, etc., Co.,* 142 U. S. 254; *Powell vs. Brunswick Co.,* 150 U. S. 433; *Erie R. R. Co. vs. Purdy,* 185 U. S. 148; *Des Moines Nav. & R. Co. vs. Iowa Homestead Co.,* 123 U. S. 555; *Columbia Water Power Co. vs. Columbia Electric Street R. Co.,* 172 U. S. 475.

We respectfully submit that Federal questions are raised on the face of this record; that they were raised on the pleadings and evidence in the lower court; that they were raised in the Supreme Court of the State on appeal from the cause below; and that, when that Court deprived the defendant of its property, although it pleaded the protection of the Constitution of the United States, without any reference to the Federal questions thus raised, demand was made of that Court in the application for rehearing that it take up and decide the Federal questions raised by the defendant and lying across the threshold of the case.

II.

We do not find anything in the brief of the mover in support of the second alternative of his motion—*i. e.*, that, if the Court has jurisdiction, it is manifest that the writ of error was taken for delay only; and that the question on which jurisdiction depends is so frivolous as not to need further argument. The brief is confined to the discussion of the question of jurisdiction only. We shall, therefore, not discuss the merits of the case, further than to say that the judgment of the District Court of Caddo Parish in favor of the defendant and the vigorous dissenting opinion of Mr. Justice Provosty in favor of the defendant are conclusive evidence that the case presented to this Court is not frivolous, and that plaintiff in error here has a right to be fully heard before the Court on its case.

Respectfully submitted,

EDGAR H. FARRAR,
JOHN D. WILKINSON,
Counsel.

APPENDIX TO BRIEF.

Section 10 of Act No. 46 of the Acts of 1892.

"SEC. 10. *Be it further enacted, etc.,* That, for the purpose of raising additional funds for said district, the said Board of Levee Commissioners shall have the power, and it is hereby authorized, to levy an annual contribution or assessment upon all lands in said district subject to taxation for levee and drainage purposes, not to exceed five cents per acre, and sixty dollars per mile of railroad lines within the territory of said district subject to taxation for levee and drainage purposes; said contribution or assessment shall be assessed and collected and paid into the State Treasury to the credit of the Red River, Atchafalaya and Bayou Bœuf Levee District in the same manner and at the same time as other taxes herein provided for are assessed, collected and paid. That, in order to provide additional means to carry out the purposes of this act, and to furnish the resources to enable said board to assist in developing, establishing and completing a system of levees and drainage and other work of public improvement, designed to aid in protecting property in the Red River, Atchafalaya and Bayou Bœuf District from disastrous floods, all lands now belonging to, or that may hereafter belong to, the State of Louisiana and embraced within the limits of the Red River, Atchafalaya and Bayou Bœuf District as herein constituted, shall be and the same hereby are given, granted, bargained, donated, conveyed and delivered to said Board of Levee Commissioners of the Red River, Atchafalaya and Bayou Bœuf District, whether said lands or parts of the lands originally granted by Congress of the United States to this State, or whether said lands have been or may hereafter be forfeited to or

bought in by or for, or sold to the State, at tax sale for nonpayment of taxes; when the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, that any and all former owners of lands which have been forfeited to purchasers by, or sold to, the State for nonpayment of taxes, may at any time within six months ensuing after the date of the passage of this act redeem said lands, or any of them, upon paying to the Treasurer of the State all taxes, interest, costs and penalties due thereon down to the date of such redemption, but such redemption shall be deemed and taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Red River Atchafalaya and Bayou Bœuf District. After the expiration of said six months it shall be the duty of the Auditor and the Register of the State Land Office, on behalf of and in the name of said State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to the said board whenever, from time to time, said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners, or by the president thereof; and, thereafter, said president of said board shall cause said conveyance to be properly recorded in the Recorder's Office of their respective parishes wherein the said lands are or may be located, and, when said conveyances are so recorded, the title to said land, with possession thereof, shall from thenceforth rest absolutely in the said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation after being conveyed to, and while they re-

main in the possession or under the control of, said board. Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such time and for such prices as said board shall deem proper, but all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Red River, Atchafalaya and Bayou Bœuf District, and shall be drawn out only upon the warrant of the president of board, properly attested, as provided in this act."

"Act No. 171 of 1902. House Bill No. 348.

"AN ACT

Authorizing the Register of the State Land Office, with the approval of the Governor, to sell and dispose of certain lands belonging to the State, in Caddo Parish, at not less than five dollars per acre, nor in greater quantities than three hundred and twenty acres to one person, preference being given to actual *bona fide* settlers, providing for a survey of the lands, the funds arising from said sales to be deposited in the State Treasury to the credit of the Board of Commissioners of the Caddo Levee District, and repealing Acts 74 of 1892 and 100 of 1900 in so far as the same affect said lands.

"Whereas, due notice of this bill has been given in the manner and during the time required by Act 50 of the Constitution of this State, proof of which has been submitted to the General Assembly, the bill being as follows:

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the Register of the State Land

Office, with the approval of the Governor, be, and he is hereby, authorized and empowered to sell and dispose of the following-described lands, situated in Caddo Parish, belonging to the State of Louisiana—to wit: The south half (S. ½) of south half (S. ½) of Section Twenty-eight (28), all that portion of the south half (S. ½) of Section Twenty-nine (29), which is included in the traverse line of Cross Lake; all in Township Eighteen North, of Range Fourteen West; and, also, all the following sections and parts of sections which are included within the traverse line of Cross Lake as follows—to wit: Sections Thirty (30), Thirty-one (31), Thirty-two (32) and Thirty-three (33), Township Eighteen North, of Range Fourteen West (18 N., R. 14 W.), Sections Four (4), Five (5), Six (6), Seven (7) and Eight (8), Township Seventeen North, of Range Fourteen West; Sections Thirteen (13), Fourteen (14), Seventeen (17), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Township Eighteen North, of Range Fifteen West; and Sections One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Township Seventeen North, Range Fifteen West, and aggregating eleven thousand acres, more or less; provided, the said lands are sold at not less than five dollars per acre, nor in greater quantities than three hundred and twenty acres to any one person, and preference shall be given to actual *bona fide* settlers.

"SEC. 2. *Be it further enacted, etc.*, That it shall be the duty of the Governor to direct the Board of State Engineers to make forthwith and from time to time, as may be necessary, surveys of all of said lands, and to subdivide

them into townships, sections, quarter-sections and other proper subdivisions that may be necessary for the identification, description. entry and sale of said lands, and to prepare maps and plats of the same, and to file the same in the State Land Office as soon as completed.

"SEC. 3. *Be it further enacted, etc.,* That the said Register deposit all funds arising from the sale of any of said lands immediately in the State Treasury, and the same shall be placed to the credit of the Board of Commissioners of the Caddo Levee District for their use and benefit.

"SEC. 4. *Be it further enacted, etc.,* That Act No. 74 of the Acts of the General Assembly of Louisiana for 1892, and Act No. 160 of the Acts of 1900, be, and the same are hereby, repealed in so far as they may in any way whatever affect any of the lands described herein the same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them by any instrument of conveyance from the State, as required by said act to complete the title to same.

(Signed) "J. Y. SANDERS,

"Speaker of the House of Representatives.

(Signed) "ALBERT ESTOPINAL,

"Lieutenant-Governor and President of the Senate.

"Approved July 9, A. D. 1902.

"W. W. HEARD,

"Governor of the State of Louisiana."

"A true copy:

JOHN T. MICHEL,

"Secretary of State."

Original

Supreme Court of the United States.

October Term, 1911.

No. 46.

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.
(No. 21,652.)

BRIEF ON BEHALF OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

WALTER GUION,
Attorney-General of the State of Louisiana.

W. P. HALL,
Of Counsel.

J. G. HAYNES, "The Legal Printer," 630-32 Poydras St., N. O., La.

Supreme Court of the United States.

October Term, 1911.

No. ——.

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.
(No. 21,652.)

BRIEF ON BEHALF OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is a suit by the State of Louisiana to be declared the owner of the bed of Cross Lake, situated in Caddo Parish, Louisiana, adjacent to the City of Shreveport, and

containing about 11,000 acres of land, a part of which is still covered by water.

In its petition the State alleges, first, that by Act 74 of 1892, creating the Caddo Levee District, a public corporation created for drainage and levee purposes, certain swamplands and lands acquired by the State for unpaid taxes were granted to the Board of Commissioners of said district, subject to the condition that the title should vest in the board only upon the execution by the State Auditor and Register of the State Land Office of deeds of conveyance and the registration of same in the parishes where the lands are situated; that the lands here claimed were not included in the grant, but that the board, assuming that they were so included, undertook to convey them to defendant's authors, and that the attemtped conveyance was and is of no effect for the reason that the board was without title and had no authority in the premises.

SECOND. That, even if it be held that the lands in question were included within the terms of the act of 1892, no title thereto ever vested in said board for the reason that no deeds of conveyance had ever been executed or recorded as required by said act; and, hence, defendant could have acquired no title through any conveyance attempted by said board.

THIRD. That, should the Court find that said lands were within the terms of said act, and that said board acquired title to the same, the conveyance to defendant's authors was a disguised donation of public property, the price purporting to have been paid having been only ten cents per acre, whereas, the lands were worth not less than two dollars per acre, and that defendant's authors are sub-

stantially the same individuals who now compose the defendant corporation.

FOURTH. That, should the grounds stated not be sustained, the attempted conveyance should be decreed of no effect because it purports to be a sale for cash, whereas no price whatever had been paid.

FIFTH. That, should none of the grounds thus relied on be found to be good, the alleged sale should be annulled for lesion beyond moiety. (Tr., pp. 1-5.)

The defendant excepted that the allegations of the petition are inconsistent and that they disclose no cause of action, and further pleaded *res judicata* and estoppel, based upon the judgment of the Supreme Court of the State in a former suit to which the State was not a party, reported in 48 An. 1081.

The exceptions having been overruled, the defendant answered that the lands claimed were included in the grant of 1892; that the title was thereby vested in the Levee Board, and that it (defendant) acquired through mesne conveyance from said board; that the price paid was sound; that the transaction was a sale and not a donation; and that the attack made thereon on account of lesion beyond moiety is prescribed by the prescription of four years. The defendant further pleaded the prescription of five and ten years, and alleged that it had been in actual possession of the lands in question since the date of its purchase, to the knowledge and with the consent of plaintiff, and had paid the taxes thereon, and pleaded estoppel.

It further alleged that, the lands having been conveyed by plaintiff to the Levee Board and by the board to its authors, this attempt to recover them, if successful, would

impair the obligations of a contract in violation of the State and Federal Constitutions. Finally, it alleged that it had paid $751.09 taxes, for which it prayed judgment, with interest, in the event of an adverse ruling upon the other matters set up.

There was judgment for the defendant in the State District Court, and the State appealed to the Supreme Court of the State, where the judgment of the District Court was reversed and judgment given for the plaintiff. (Tr., pp. 100-107.) From this judgment the defendant below, plaintiff in error here, sued out this writ of error from this Court.

The facts of the case are that by Act 74 of the acts of 1892 the Legislature of Louisiana created the Caddo Levee District and provided a Board of Commissioners to administer its affairs, with power to levy taxes and impose contributions, and, for the purpose of providing additional revenue from the sale of swamplands, by Section 9 of the act certain lands were granted to the board under conditions stated in said Section 9, which is herewith quoted in full, as follows:

> "SEC. 9. *Be it further enacted, etc.*, That, in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable the said board to assist in developing, establishing and completing the levee system in the said district, all land now belonging or that may hereafter belong to the State of Louisiana and embraced within the limits of the Levee District as herein constituted shall be, and the same are hereby granted given, bargained, donated, conveyed and delivered unto the said Board of Commissioners of the Caddo

Levee District, whether the said lands or parts of lands were originally granted by the Congress of the United States to the State of Louisiana or whether the said lands have been or may hereafter be forfeited or bought in by or for, or sold to the State at tax sale for nonpayment of taxes; where the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by or sold to the State for nonpayment of taxes may at any time within six months next ensuing after the passage of this act redeem the said lands or all of them upon paying to the Treasurer of this State all taxes, costs and penalties due thereon down to the date of the said redemption, but such redemption shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months *it shall be the duty of the Auditor and Register* of the State Land Office, on behalf of and in the name of the State, *to convey to the said Board of Levee Commissioners by proper instruments of conveyance all lands hereby granted or intended to be granted and conveyed* to the said board whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners or by the president thereof, and thereafter the said president of the said board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, *and when the said conveyances are so recorded the title to the said lands, with the posses-*

> *sion thereof, shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees.* The said lands shall be exempted from taxes after being conveyed to and while they remain in the possession or under the control of the said board. The said Board of Levee Commissioners shall have the power and authority to sell, mortgage and pledge or otherwise dispose of the said lands in such quantities, and at such times, and at such prices, as to the board may seem proper. But all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Caddo Levee District, and shall be drawn only upon the warrants of the president of the said board, properly attested as provided in this act." (Italics ours.)

It will be observed that this Section 9 provides that conveyances shall be executed by the Auditor and Register for all of the lands granted, and that such conveyances shall be recorded in the Recorder's Office of the parish wherein the land is situated, and when the said conveyances are so recorded the title to the said lands, with the possession thereof shall from *thenceforth* vest absolutely in the said board, its successors or grantees.

This section was amended by Act 160 of 1900 so as to embrace all State lands without limiting the grant to swamplands and tax-forfeited lands, but making no other change in the section, and leaving the requirement that deeds of conveyance should be executed by the Register of the Land Office and the Auditor in full force and effect.

Under the authority of Section 9 large quantities of land were certified by the Register and Auditor to the Caddo Levee Board, as provided in the act, but it was admitted on the trial of this case, as shown in the statement of the case

by the Supreme Court of Louisiana, that no deeds of conveyance of the lands in controversy have ever been executed by the Register of the State Land Office and Auditor, or either of them, to the Board of Commissioners of the Caddo Levee District, and nothing of the kind has been recorded in the conveyance books of Caddo Parish up to this date. (Tr., pp. 26-101.)

It further appears from the statement of the Supreme Court of Louisiana and from the record that the lands here claimed constituted the bed of the body of water near Shreveport known as Cross Lake, which, is consequence of the removal of a raft which for many years obstructed Red River, and the reconstruction of the levees, is drying up, leaving said lands available for farming purposes; the 11,000 acres in controversy being at the time of the trial in the District Court worth from fifty to one hundred thousand dollars, though they were not worth that much at the date of the transaction out of which this litigation has arisen.

In Augus, 1895, the Levee Board adopted a resolution authorizing the sale of the lands in question to the Gun Club for $1,100, or, say, ten cents an acre for 11,000 acres, cash. There being no such corporate entity as the Gun Club, the secretary of the board was handed checks signed by individuals for amounts aggregating that specified in the resilution.

A controversy then arose between the individuals constituting the "Gun Club" and others constituting the "Rod and Gun Club" as to which organization was intended by the resolution, and the secretary of the board was instructed not to collect the checks which had been handed to him (and which were afterwards returned to the drawers). The board about this time, however, appears to nave executed an instrument conveying the lands to the individuals consti-

tuting the Gun Club, who then incorporated themselves under the name of the "Shreveport Gun Club," and transferred the lands to the corporation so created, the president of the board ratifying the transfer. Shortly afterwards (on September 20, 1895) the board adopted a resolution instructing its attorney to annul the conveyance which had thus been made, and a suit was then instituted by the Rod and Gun Club, or the individuals so styling themselves, to which the Gun Club and the board were made, or became, parties, and which resulted in a judgment in the State Supreme Court confirming the conveyance in question.

Rod and Gun Club vs. Board, 48 La. An. 1081.

The members of the Shreveport Gun Club then appear to have organized the corporation now before the Court as defendant and to have transferred the lands in dispute to it. The transcript does not contain the resolution authorizing the conveyance of the lands, or the act of conveyance, or the act of ratification (by the president of the board), but it does contain a copy of the resolution instructing the attorneys of the board to annual the conveyance, and it also shows that, on September 1, 1896, Mr. Jacobs (one of the grantees) appeared before the board and proposed to pay for lake lands sold to the Gun Club, "provided the money be deposited subject to the title being perfected;" that the board instructed its secretary "to make a special deposit of $1,100, subject to above condition;" that on September 2, 1896, Mr. Jacobs, in his capacity as president of the First National Bank of Shreveport, issued a certificate reading:

> "The Caddo Levee Board has deposited in this bank eleven hundred dollars, payable to the order of the Caddo Levee Board, in current funds, on return

of this certificate, properly indorsed, and when the title to the Cross Lake lands, sold by said board to W. B. Jacobs *et al.*, shall be made perfect and cleared of any cloud."

Tr., p. 103.

The Supreme Court of the State, following prior decisions, held that, inasmuch as the granting act specifically required conveyance of the lands to be made by the Register and Auditor and declared that "when such conveyances are so recorded the title to the said lands with the possession thereof shall thenceforth vest absolutely in said board," such conveyance was necessary to give the Levee Board title to the land or authority to sell it; and it overruled all of defendant's exceptions and awarded the land to the plaintiff, giving the defendant judgment for the amount of taxes paid and the interest. The Court found it unnecessary to pass on the other grounds of nullity urged by defendant. The case is reported in 123 La. 208.

We submit that it is too plain for argument that the overruling of the exceptions of inconsistency, no cause of action, estoppel, and prescription, based exclusively upon State law and State practice, is not and cannot be made the subject of writ of error to this Court, and this appears to be conceded by the defendant.

Is There a Federal Question?

We have previously filed a motion to dismiss the writ of error for want of a Federal question sufficient to give this Court jurisdiction, and we ask and invoke the consideration of the authorities therein cited in support of such mo-

tion. The petition and answer disclose no Federal question. The attempt to inject a Federal question into the case through the application for rehearing and the assignment of errors, in which a number of matters are mentioned as having been pleaded in the answer which were not so pleaded, cannot change the rule that the Federal question must appear in the pleadings and arise from the record. The only thing in the answer that even mentions the law or Constitution of the United States, or hints at a Federal question, is the following paragraph:

> "That, by the terms of said Act 74 of 1892 and the mandatory act thereto, the State lands were given, granted, donated and delivered to said Caddo Levee Board, and, acting on the faith of which, the same was purchased by defendant's vendors, W. B. Jacobs, *et al.*, and to permit the said State now to retake said lands would be in violation of its contract embraced in said acts, and your defendants relied thereon and the decisions of the Supreme Court of the State, thus impairing the obligations of its contract in violation of the Constitution of the United States and the State of Louisiana."

We submit that, under the authorities cited in our brief in support of the motion to dismiss, no Federal question is here presented, and, if one is presented sufficiently by this plea, it has no color of support in fact as shown by this record. It is not sufficient even that a Federal question should be properly pleaded; it must have some reality in fact.

The case here involved only the *construction* by the State Court of a State statute making a grant to a State agency—a Levee Board—for State purposes. The construc-

tion of a State statute is not a Federal question. It is true that in the application for rehearing and in the assignment of errors an effort is made to claim that Act 171 of 1902 of the Legislature of Louisiana impairs the obligation of plaintiff's contract. (Said act is printed in appendix to this brief.) This act was not mentioned in plaintiff's petition *or in defendant's answer,* or in the opinion of the Court, though it is mentioned historically in its statement of the case, but it had no effect whatever in the decision of the case, and, in the nature of things, could have none. If the defendant got a good title from the Levee Board, no repealing act of the Legislature could affect it, and if it got no title from the Levee Board it was immaterial to it what disposition the State might make of the property.

The State does not base its right to sue the defendant to be declared the owner of this land upon Act 171 of 1902, but its right of action is based upon its original ownership of the land, which ownership still exists in the State, notwithstanding the grant in Section 9 of Act 74 of 1892, above quoted, for the reason that said grant was never completed as to this land by its being certified to the Levee Board as it in terms required.

This suit could have been brought and maintained just as well as if the Act 171 of 1902 had never been enacted. If the title passed out of the State and into the Levee Board by the granting Act 74 of 1892, without the execution of any act of conveyance by the Auditor and Register as therein required, it likewise passed to defendant's authors, and the Act 171 of 1902 could not restore it to the State.

If, however, the title did not pass from the State by Act 74 of 1892 without any act of conveyance, as we contend, the title is still in the State, and it had the right to bring this suit.

The Act 171 of 1902 cuts no figure whatever in this litigation, and was not invoked by plaintiff or assailed by defendant in the State courts except on application for rehearing in the Supreme Court.

The case of *State vs. Tensas Delta Land Co.*, 52 Sou. Rep. 216 (126 La. 59), which, it is claimed, held that the State cannot bring such a suit, presented an entirely different question. In that case the land had been properly and regularly certified to the Levee Board, and the Court held that the State had no right to sue for it, the Levee Board's title being complete at the time it is said to have disposed of it.

But even if a Federal question did exist, which is denied, it was not properly raised by answer or any plea, and it cannot be considered by this Court except when properly and timely pleaded in the lower courts. (See authorities cited in our motion to dismiss.)

We submit that the writ of error should be dismissed for want of jurisdiction in this Court.

On the Merits.

The construction of the State jurisprudence, Section 9 of Act 74 of 1892, above quoted, requiring deeds of conveyance to be executed by the Register and Auditor, and declaring that when recorded the title shall from thenceforth vest in the Levee Board, is not a new question in the jurisprudence of this State, and the decision rendered by the Supreme Court of the State in the case at bar is identical with that rendered by it in former cases.

The question arose in *McDade vs. Levee Board*, 109 La. 638, under the Act 89 of 1892, creating the Bossier Levee Board, where the same language was used.

The Court said:

> "Defendant board was created by Act 89 of 1892, the ninth section of which granted to it the lands within the limits of the levee district belonging at the time to the State, or which might thereafter be acquired by the State within such limits; but by the terms of said ninth section this grant was not to become operative until formal act of conveyance of the lands so donated shall have been made to the Levee Board by the Auditor of the State and the Register of the State Land Office."

> "Thus the section provides:

> " 'It shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instrument of conveyance, *all lands hereby granted or intended to be granted and conveyed* to the said board whenever, from time to time, the said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners, or by the president thereof, and thereafter the said president of the said board shall cause the said conveyance to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located, *and when the said conveyances are so recorded the title to the said lands, with the possession thereof, shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees.*'

> "It will thus be seen that the intention of the act was, and is, that neither the title to nor the possession of the lands donated was actually to vest in the Levee Board until the State officials mentioned—to wit, the Auditor and the Register of the Land Office—shall have acted in the way the statute directs, by making formal conveyance to the board, describing the lands; and only when this is done, and the act of conveyance duly inscribed in the conveyance records of the parish, was title and possession to the lands so conveyed absolutely to vest in the board."

In this case the Court also held that the land was taken off of the market as State lands from the time of the passage of the act, although the title of the Levee Board became vested only from the recording of the act of conveyance required by the act.

In *St. Paul vs. Louisiana Cypress Lumber Company*, 116 La. 585, this Court, in disposing of the same question, at page 593 said:

> "There is another objection to the title which defendant claims. In considering this question it must be remembered that the title under which defendant claims was a tax sale of land, of which the Levee Board illegally assumed control. The defendant avers that the land in question inured to the Levee Board under Act No. 97, p. 107, of 1890.
>
> "There is a clause in said act which has heretofore been construed as a condition precedent. This clause had not been complied with. It provides that the land was to be vested in the Levee Board upon the execution of an instrument of conveyance by the Auditor and the Register of such land documents; and it further provides that it is to be recorded in

the Recorder's Office of the parish. This does not appear ever to have been done. The defendant only holds the deed, as before stated, from the Levee Board.

"It must be said that defendant's deed of property thus acquired was properly recorded, and that it was executed for valid consideration.

"The defendant's contention is that the grant of

"The defendant's contention is that the grant by the State of these lands, sold at tax sale, was a grant *in praesenti*, and that the provision for the making out of a list by the Auditor and the Register of the Land Office was intended as descriptive, and that, instead of being a condition precedent, it was a condition subsequent, and as such could only be taken advantage of by the grantor in the event of failure to make out the list.

"This argument of learned counsel for defendant would have force were it not that this Court has taken a contrary view in a decision recently handed down. As this decision relates to real property, it can be set aside only upon most convincing grounds. It has become a rule of property.

'Under the interpretation in decision cited, *infra*, the clause is not directory, but mandatory. *(Williams vs. Whitecastle Lumber Co.*, 114 La. 450 [38 South. 414].*)*"

The *McDade case* involved swamp lands; the *St. Paul case* involved tax-sale lands; so it had been authoritatively decided before the present case arose that the provision requiring a conveyance from the Auditor and Register to the Levee Board before the title to the lands granted it vested in such board applies to both classes of land. Indeed, it would be difficult to see how it could be otherwise, since the act says it shall be the duty of the *Register and Auditor,*

"on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper *instrument of conveyance, all lands hereby granted, or intended to be granted and conveyed,* to the said board, whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be required to do so by the said Board of Commissioners, or by the president thereof; and thereafter the said president of the said board shall cause the said conveyance to be properly recorded in the Recorder's Office of the respective parishes wherein the said lands are located; *and, when the conveyances are so recorded, the title to the said lands, with the possession thereof, shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees.*"

The contention that this provision only applies to tax-forfeited lands is unsupported by the text or by reason. The act does not say swamp lands or tax-forfeited lands, but says "all lands," and the Court simply holds that it means what it says.

If the act had referred only to tax-forfeited lands, why did it say "all lands" instead of "tax lands," or why did it require the Register of the Land Office, who has nothing to do with tax-forfeited lands, to join in the act of conveyance?

The case of *Worden vs. Fisher*, 52 An. 576, cited by defendant, is not out of harmony with the *McDade* and *St. Paul cases*. In that case the land had been granted to the Levee Board and certified to it by the Auditor alone, and the Levee Board had sold it to defendant's author and accepted the price. The plaintiff claimed under a sale from

the Register of the Land Office made after the land had been granted by the act of the Legislature to the Levee Board. The Court properly held that, as the act had been passed by the Legislature granting the land to the Levee Board, the necessary effect of it was to revoke and take away any authority which the Register had to sell the land under his general authority to sell State land; that, whether the title had fully vested in the Levee Board or not, the agency of the State Register of the Land Office to sell this particular land was revoked by this act.

The general conclusion of the Court was in these words (p. 581):

> "Defendant unquestionably has a title, and to set it aside plaintiff must show that he has a superior right as owner. *Causa idonea transferendum dominum.* Even against one having only a *prima facie* title or right, plaintiff must make out a title. *In pari casu potior est conditio possidentis.* Here there is no trial of title at all, as plaintiff has no title."

The real point decided was that, whether title had passed to the Levee Board or not, the agency of the Register to sell the land as State land had been revoked, and the plaintiff, claiming under a sale from the Register, who had no authority to sell, was claiming under no title at all; and that, whether defendant had a good title or not, it was sufficient to defeat plaintiff, who had none at all. As the Court says:

> "Here there is no trial of title at all, as plaintiff has no title."

Under the law of Louisiana, in a petitory action the plaintiff must show a good title, or at least one better than any that the defendant can urge against him. There the defendant did have a title, at least better than what the plaintiff held, which was none at all.

There are other general statements in the opinion which are but *obiter dictum*, and not at all necessary for the decision of the case; and, when the case is thoroughly examined and tested by the jurisprudence of Louisiana with reference to the petitory action, it will be found that there is nothing in it inconsistent with what the Court held in the *McDade case* and in the *St. Paul case*. Besides, this decision was rendered in 1900, five years after the defendant and its authors claimed to have bought the land, and could not have influenced them in the purchase.

These cases—*St. Paul case*, 116 La. 585, and *McDade case*, 109 La. 638, and *Williams case*, 114 La. 450—were all decided before this suit was filed, and it might fairly be said that the rule therein recognized—that a conveyance from the State by the Auditor and Register of the Land Office was necessary to vest title in the Levee Board—had become a rule of property in Louisiana.

Generally speaking, the Federal Courts will follow the State jurisprudence construing State laws, especially with reference to titles to real estate, and the more readily where the same rule has been announced in prior decisions.

On this point we quote from *Freeport Water Company vs. Freeport*, 180 U. S. 587, in which the Court at page 595

quotes from *Burgess vs. Seligman*, 107 U. S. 20, with approval, as follows:

> " 'Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled it is the right and duty of the Federal Courts to exercise their own judgment; as they always do in reference to the doctrines of commercial law and general jurisprudence.' "

In such cases this Court will ordinarily follow the interpretation and construction of the State Court, even though, if presented as an original question, its own construction might have been different.

We cite the following:

It is the established doctrine that this Court will adopt and follow the decisions of the State Courts in the construction of their own Constitution and statutes when that con-

struction has been settled by the decision of the highest tribunals.

Walker vs. State Harbor Commissioners, 17 Wall. 648; *Nesmith vs. Sheldon,* 7 How. 812; *Games vs. Dunn,* 14 Pet. 322; *Bailey vs. Magwire,* 22 Wall. 215.

It follows the construction of a State statute by the highest Court of a State is a rule of property in that State.

Bacon vs. Northwestern Mutual Life Ins. Co., 131 U. S. 258; *Enfield vs. Jordan,* 119 U. S. 680; *Ridings vs. Johnson,* 128 U. S. 212; *Clement vs. Packer,* 125 U. S. 309.

Its interpretation is accepted as the true interpretation, whatever may be our opinion as to its original soundness.

Elmendorf vs. Taylor, 10 Wheat. 152; *Green vs. Neal,* 6 Pet. 291; *Alcott vs. The Supervisors,* 16 Wall. 678; *State vs. R. R. Tax Cases,* 92 U. S. 575; *Fairfield vs. Galatin Co.,* 100 U. S. 51.

But even if it should be found that a Federal question was raised in the pleadings, and that it is now properly before this Court, and if this Court is not to be guided by the State decisions on the same question, we submit that the interpretation placed upon Section 9 of Act 74 of 1892, hereinabove quoted, granting the land to the Levee Board, by the Supreme Court of Louisiana is correct. It has often been held by this Court that wherever the granting act requires a deed to be made it must be done before the title

passes, and no case has been found or cited, so far as we know, holding the contrary.

The case of *Rogers Locomotive Works vs. Emigrant Co.*, 164 U. S. 559, involved the construction of the swamp land grant of 1850. The Emigrant Company traced title to the swamp land grant, and the Rogers Machine Works claimed under a railroad grant of May 15, 1856, under which later act the land in question had been certified to and accepted by the State, and it had never been certified to the State under the swamp land grant, and the precise point was made that the swamp land grant of 1850 was a grant *in praesenti*, and that the certification of the land as provided in the second section was a mere formality and unnecessary to vest title in the State from the date of the grant.

Reviewing the case of *Hannibal & St. Joe R. R. Co. vs. Smith*, 9 Wall. 95, and *French vs. Fyan*, 93 U. S. 169, and *Wright vs. Roseberry*, 121 U. S. 488, and holding all of them as exceptional in their circumstances, this Court said, at page 570:

> "But it is equally true that the act of 1850 made it the duty of the Secretary of the Interior, as soon as practicable after the passage of that act, to make out an accurate list and plats of the swamp and overflowed lands granted to any State and transmit them to the executive of such State, 'and, at the request of said Governor, cause a patent to be issued to the State therefor; and *on that patent* the fee simple to said lands shall vest in said state,' subject to the disposal of the Legislature. While, therefore, as held in many cases, the act of 1850 was in *praesenti*, and gave an inchoate title, the lands needed to be identified as lands that passed under the act; which being

done, and not before, the title became perfect as of the date of the granting act."

Following *McCormack vs. Hayes*, 159 U. S. 346; and citing *Wright vs. Roseberry*, 121 U. S. 488; *Tubbs vs. Wilhoit*, 138 U. S. 134; *Chandler vs. Calumet*, 149 U. S. 79.

The Court concluded, referring to the duty of the Secretary of the Interior to identify and certify the lands to the State, at page 574 as follows:

> "When he made such identification, then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple title vested in the State. The State's title was at the outset an innhoate one, and did not become perfect, as of the date of the act, until a patent was issued."

The case of *Michigan Land & Lbr. Co. vs. Rust*, 168 U. S. 589, involved the right and power of the Secretary of the Interior to have a resurvey of lands supposed to have been granted by the act of 1850 and certified to the State, where an error was discovered before the patent issued. The Court, after quoting the second section of the act of 1850, requiring the identification by the Secretary of the Interior, said at page 592:

> "It will be perceived that the act contemplated the issue of a patent as the means of transferring the legal title."

And it quoted from *Rogers Locomotive Machine Works vs. American Emigrant Co.*, 164 U. S. 559, the passage above quoted, and then said:

> "Generally speaking, while the legal title remains in the United States, the grant is in process of admin-

istration, and the land is subject to the jurisdiction of the Land Department of the Government. It is true a patent is not always necessary for the transfer of the legal title; sometimes an act of Congress will pass the fee."

Citing a number of cases.

And then again, on the same page, the Court says:

"Sometimes a certificate of a list of lands to the grantee is declared to be operative to transfer such title (Rev. Stat., Sec. 2449; *Frasher vs. O'Connor*, 115 U. S. 102), but wherever the granting act specifically provides for the issue of a patent, then the rule is that the legal title remains in the Government until the issue of the patent, and, while so remaining, the grant is in process of administration, and the jurisdiction of the Land Department is not lost."

In *Brown vs. Hitchcock*, 173 U. S. 473, the above cases were referred to with approval and reaffirmed, the Court saying on page 476:

"Under the swamp-land act the legal title passes only on delivery of the patent, so the statute in terms declares. The second section provides that the Secretary of the Interior 'at the request of said Governor [the Governor of the State] shall cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State.'"

Citing *Rodgers Locomotive Works vs. Emigrant Co.*, 164 U. S. 559, and *Michigan Land & Lbr. Co. vs. Rust*, 168 U. S. 589.

The Court further said:

> "In this case the record discloses no patent, and, therefore, no passing of the legal title. Whatever equitable rights or title may have vested in the State, the legal title remains in the United States."

The case of *Wright vs. Roseberry*, 121 U. S. 448, arose under the act of Congress of July 23, 1866, entitled "An Act to Quiet Land Titles in California," of which this Court said:

> "Congress changed the provisions of the law for the identification of swamplands in that State. It no longer refers their identification to the Secretary of the Interior, but provided for such identification by the joint action of the State and Federal authorities."

The case was exceptional, and, like that of *R. R. Co. vs. Smith*, 9 Wall. 95, is not to be extended to cases other than where the Secretary of the Interior has wholly failed to act, and it makes no inroad whatever upon the general rule, so often stated, that where the granting act requires a deed the title does not pass until the deed is signed and issued. (See both cases explained and differentiated in *McCormick vs. Hayes*, 159 U. S. 332.

This rule of jurisprudence requiring a deed to pass title in all cases where the granting act provides for a deed illustrates the general rule that the statutes in respect to acts to be done by pubilc agents or functionaries in the discharge of public duties are to be regarded as mandatory and not directory, and it is supported by the folowing cases in this court::

> *Anthony vs. County of Jasper*, 101 U. S. 693; *Coler vs. Cleburne*, 131 U. S. 162; *Bissell vs. Spring Valley*, 110 U. S. 162; *McGarrahan vs. Mining Co.*, 96 U. S. 316.

In the last-cited case the point at issue was whether the evidence showed upon its face the execution of a patent sufficient in law to pass the title to the United States in certain public lands.

The Supreme Court said:

> "Thus it appears that the patent for lands must be signed in the name of the president, either by himself or by his duly-appointed secretary, sealed with the seal of the General Land Office, and countersigned by the Recorder. Until all of these things have been done the United States has not executed a patent for a grant of lands. Each and every one of the integral parts of the execution is essential to the perfection of the patent. They are of equal importance under the law, and one cannot be dispensed with more than another. Neither is directory, but all are mandatory. The question is not what, in the absence of statutory regulation, would constitute a valid grant, but what the statute requires. * * * The legal title to lands cannot be conveyed except in the form provided by law."

In *Anthony vs. County of Jasper*, 101 U. S. 698, the Supreme Court said:

> "The public can act only through its authorized agents, and it is not bound until all who are to participate in what is to be done have performed their respective duties. The authority of a public agent depends on the law as it is when he acts. He has only such powers as are specifically granted," etc.

From *Chaffe vs. Stubbs*, 37 An. 658, we quote:

> "Whoever deals with an agent is put on his guard by the very fact and does so at his risk. It is his right and duty to inquire into and ascertain the nature and extent of the powers of the agent and to determine whether the act or contract about to be consummated comes within the province of the agency, and will or not bind the principal. (1 Am. & Eng. Enc. of Law, p. 987, 2d Ed.)"

This rule of law is more riiidly invoked when persons are dealing with public officers.

In the case of *Whitesides et al. vs. United States*, 93 U. S. 256, the Supreme Court of the United States said:

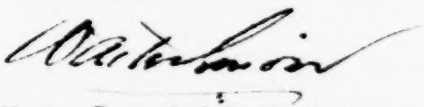
> "Different rules prevail in respect to the acts and declarations of public agents from those which ordinarily govern in the case of mere private agents. * * * Individuals as well as Courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act."

Finally, we submit that no Federal question has been properly presented by the pleadings in this case, and that this Court is without jurisdiction and should dismiss the writ of error.

But even if the Court should be of opinion that it has jurisdiction, then we submit that the construction of the State law by the State Supreme Court, having become a rule of property in the jurisprudence of Louisiana, was the law

of the State and should be followed by this Court. But even if not to be regarded as a rule of property, and if it is to be treated as an original question, still the interpretation placed upon the granting act by the Supreme Court of Louisiana was correct, and its judgment should be affirmed.

Respectfully submitted,



Attorney General of the State of Louisiana.

W. P. HALL,

Of Counsel.

APPENDIX.

Act No. 171 of 1902. **House Bill No. 348.**

AN ACT

Authorizing the Register of the State Land Office with the approval of the Governor to sell and dispose of certain lands belonging to the State in Caddo Parish, at not less than five dollars per acre, nor in greater quantities than three hundred and twenty acres to one person preference being given to actual bona fide settlers, providing for a survey of the lands, the funds arising from said sales to be deposited in the State Treasury to the credit of the Board of Commissioners of the Caddo Levee District and repealing Acts 74 of 1892 and 160 of 1900 in so far as the same affect said lands.

Whereas, due notice of this bill has been given in the manner and during the time required by Act 50 of the Constitution of this State, proof of which has been submitted to the General Assembly, the bill being as follows:

Authorizing Sale of Certain Lands in Caddo Parish.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the Register of the State Land Office, with the approval of the Governor be and he is hereby authorized and empowered to sell and dispose of the following described lands situated in Caddo Parish, belonging to the State of Louisiana, to-wit: The South half (S. ½) of South half (S. ½) of Section twenty-eight (28),

all that portion of the South half (S. ½) of Section twenty-nine (29), which is included in the traverse line of Cross Lake; all in Township eighteen North of Range fourteen west, and also all the following sections and parts of sections which are included within the traverse line of Cross Lake as follows, to-wit: Sections thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33), Township eighteen North of Range fourteen west, (18 N. R. 14 W.) Sections four (4), five (5), six (6), seven (7) and eight (8), township seventeen North of Range fourteen West; Sections thirteen (13), fourteen (14), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), Township eighteen North of Range fifteen west; and Sections one (1), two (2), three (3), four (4), five (5) and six (6), T. seventeen North, Range fifteen west, and aggregating eleven thousand acres, more or less; provided the said lands are sold at not less than five dollars per acre, nor in greater quantities than three hundred and twenty acres to any one person, and preference shall be given to actual bona fide settlers.

Summary of Lands.

SECTION 2. Be it further enacted, etc., That it shall be the duty of the Governor to direct the Board of State Engineers to make forthwith, and from time to time, as may be necessary, surveys of all of said lands and to subdivide them into townships, sections, quarter sections and other proper subdivisions that may be necessary for the identi-

fication, description, entry and sale of said lands, and to prepare maps and plats of the same and file the same in the State Land Office as soon as completed.

Proceeds of Sale to Be Placed in Treasury.

SECTION 3. Be it further enacted, etc., That the said Register deposit all funds arising from the sale of any of said lands immediately in the State Treasury, and the same shall be placed to the credit of the Board of Commissioners of the Caddo Levee District for their use and benefit.

Repealing Act 74 of 1892 and Act 160 of 1900.

SECTION 4. Be it further enacted, etc., That Act No. 74 of the Acts of the General Assembly of Louisiana for 1892 and Act No. 160 of the Acts of 1900 be and the same are hereby repealed in so far as they may in any way whatever affect any of the lands described herein, the same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them by any instrument of conveyance from the State as required by said act to complete the title to same.

(Signed) J. Y. SANDERS,
Speaker of the House of Representatives.

(Signed) ALBERT ESTOPINAL,
Lieutenant Governor and President of the Senate.

Approved July 9th, A. D. 1902.

W. W. HEARD,
Governor of the State of Louisiana.

A true copy:

JOHN T. MICHEL,
Secretary of State.

25

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 46.

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

EDGAR H. FARRAR,
JOHN D. WILKINSON,
Counsel for Plaintiff in Error.

J. G. Hauser, "The Legal Printer," 620-22 Poydras St., N. O., La.

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 46.

CROSS LAKE SHOOTING AND FISHING CLUB,
Plaintiff in Error,

versus

THE STATE OF LOUISIANA,
Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

The pleadings and facts in this case are fully stated in the brief heretofore filed on the application to dismiss or affirm.

I.

The State had no standing in court to sue for these lands without relying upon the repealing act of 1902.

It is manifest that, without the act of 1902 repealing the grants made by the State to the Caddo Levee Board of the lands previously sold by that board to the defendant's author, the State would have no standing in court to recover these lands. If the lands were not granted by the act of 1892 they were granted by the act of 1900, and, having been sold by the board prior to the passage of the act of 1900, the title given by that act enured immediately to the benefit of its vendees.

Omit that act, and the State is face to face with the unrepealed and still in force acts of 1892 and 1900, which, according to its own interpretation of these acts, did not vest title until request was made by the Levee Board of the Auditor for deeds, and such deeds had been given and recorded. Under these acts there was no limit of time placed on the right of the Levee Board to request the deeds. The board could make that request in six months, or in ten years, or in twenty years, or at any time during the period when the acts of 1892 and 1900 were in force. These statutes stood as a perpetual bar to any demand of the executive department to recover the lands by absolute title as claimed in its petition. The statute **"delivered"** the lands to the Levee Board, with the right (according to the State's claim) to obtain a title on a request for the same of the Auditor or of the Register, who had no discretion except to make the deeds. This *legislative delivery* of the lands was made without any conditions. The board was given unlimited powers to sell and dispose of the lands, whether before it perfected

its title or after it perfected its title. The language of the act is (original brief, p. 10):

> "The said Board of Commissioners shall have the power and authority to sell, mortgage and pledge, or otherwise dispose of, said lands, in such quantities and at such times and such prices as to the board may seem proper."

Therefore, the Attorney-General was compelled to appeal to the repealing act of 1902 to maintain his standing in court, which it appears by the opinion of the lower Judge he did, both on the trial of the exceptions and on the merits. (See Rec., pp. 12, 19.)

As to the absolute want of power in the State to sue for the recovery of lands disposed of by a Levee Board, see *State vs. Tensas Delta Land Co.*, 126 La. 59.

The failure of the State in its pleadings to rest its claim on the repealing act of 1902 was part of the plan to evade the clear Federal question which lay across the threshold of this case. The petition was cast upon two theories:

FIRST. That the act of 1892 did not cover lands owned by the State by virtue of her sovereignty, and that the lands in question were such lands.

SECOND. That, even if the lands belonged in fact to the class included in the statute, the title had not vested in the Levee Board because that board had not demanded and obtained from the Auditor and Register a formal deed therefor.

The first theory was completely answered by the act of 1900, broadening the donation and making it cover State

sovereignty lands, the effect of which immediately enured to the benefit of the vendees of the grantee. When this act was pleaded the plaintiff immediately answered: "If you never got any title there was none to enure. The conditions of vesting title in the Levee Board were the same under the act of 1900 as under the act of 1892, and the Levee Board never had any title to grant to you, because the Levee Board never made any request for a deed to it by the Auditor and Register, and no such deed was ever given and recorded."

Our answer to that was: "We grant your position for the sake of argument that no deed was ever requested or given, and that such a deed was requisite to vest title in the Levee Board; but that does not give the State, through its Attorney-General, representing the executive department of the Government, the right to sue to recover the absolute title to these lands, as demanded in this case. The Levee Board may at any time request such deed, as these lands are by said acts set aside and dedicated by the Legislature to be transferred to the Levee Board at its request, and we have a valid contract with said Levee Board to request the delivery to it of such a deed in order that our previous title might be made good. Therefore, the State cannot stand in judgment to recover these lands at all, because the executive and judicial departments of the Government cannot set aside a legislative dedication."

The only possible answer to that was the plea made by the State *ore tenus*, that by the act of 1902 the Legislature had changed this dedication, had repealed this inchoate grant, had taken away from the Levee Board the power to dispose of these lands or to perfect the title to any lands it had sold and had directed the Auditor to sell them and pay

the proceeds into the Treasury for the use and benefit of the Levee Board.

Thereupon arose inevitably the Federal question pleaded by the defendant: "This act impairs the obligation of our contracts with the Levee Board in contravention of the Constitution of the United States."

It is therefore impossible to give the State a standing in court to recover the claimed "absolute title" to these lands without giving full effect to this repealing act, which, from this point of view alone, paralyzes the power of the Levee Board to carry out its contract to perfect the title given to the grantors of defendant.

The Supreme Court of Louisiana ignored this question. It ignored the defendant's plea of no cause of action (or demurrer) to plaintiff's action, and thus avoided the decision of this point.

This act impaired the obligation of our contract, because, even if the title given by the Levee Board was inchoate, the board had the power, on a mere request made by it or its president, to make the title perfect. Having sold the property, it was in law and in equity obligated to do all acts necessary to give title to what it sold. And it could have been compelled by a court of equity to make the request for a deed from the Auditor and Register. But the case is stronger than the mere obligation arising out of the original deed. By its resolutions of December 18, 1901, it contracted with its vendees, who were the vendors and warrantors of the defendant, to perfect this title by making request for the validating deed.

The effect of the repealing act was to take away from the Levee Board the power to make the request and from the Auditor and Register the power to make the deed, which they were compelled to give on such request.

II.

The grant of lands made by the act of 1892 to the Caddo Levee Board was a grant in presenti, and conveyed to said board immediately the State lands situated within the prescribed limits.

In *Rutherford vs. Greene's Heirs*, 2 Wheat. 196, the issue was whether a grant of the State of North Carolina to General Nathaniel Greene was a grant *in presenti*. The grant read:

> "That 25,000 acres of land shall be allotted for and given to Major-General Nathaniel Greene, his heirs and assigns, within the bounds of the lands reserved for the use of the army, to be laid off by the aforesaid commissioners, as a mark of the high sense this State entertains of the extraordinary services of that brave and gallant officer."

In deciding this case Chief Justice Marshall said:

> "On the part of the appellant it is contended that these words give nothing. They are in the future, not in the present, tense; and indicate an intention to give in future, but create no present obligation on the State, nor present interest in General Greene.
>
> "The Court thinks differently. The words are words of absolute donation, not, indeed, of any specific land, but of 25,000 acres in the territory set apart for the officers and soldiers.
>
> " 'Be it enacted, that 25,000 acres of land shall be allotted for and given to Major-General Nathaniel Greene.' Persons had been appointed in a previous section to make particular allotments for individuals out of this large territory reserved, and the words of

this section contain a positive mandate to them to set apart 25,000 acres for General Greene. As the act was to be performed in future, the words directing it are necessarily in the future tense. 'Twenty-five thousand acres of land shall be allotted for and given to Major-General Nathaniel Greene.' Given when? The answer is unavoidable—when they shall be allotted. Given how? Not by any future act—for it is not the practice of legislation to enact that a law shall be passed by some future Legislature, but given by force of this act.

"It has been said that, to make this an operative gift, the words 'are hereby' should have been inserted before the word 'given'; so as to read, 'shall be allotted for, and are hereby given to,' etc. Were it even true that these words would make the gift more explicit, which is not admitted, it surely cannot be necessary now to say that the validity of a legislative act depends in no degree on its containing the technical terms usual in a conveyance. Nothing can be more apparent than the intention of the Legislature to order their commissioners to make the allotment, and to give the land when allotted to General Greene."

In *Lessieur vs. Price*, 12 How. 59, there was in question a grant made by the act of Congress of March 6, 1820, to the State of Missouri. The language of the grant was

> "that four entire sections of land be, and the same are hereby, granted to said State, * * * which said sections shall, under the direction of the Legislature of said State, be located as near as may be in one body, at any time, in such townships and ranges, as the Legislature aforesaid may select on any of the public lands of the United States."

The Court said on page 76:

> "The land was granted by the act of 1820; it was a *present grant*, wanting identity to make it perfect; and the Legislature was vested with full power to select and locate the land; and we need only here say what was substantially said by this Court in the case of *Rutherford vs. Greene's Heirs*, 2 Wh. 196, that the act of 1820 vested a title in the State of Missouri of four sections; and that the selection made by the State Legislature pursuant to the act of Congress, and the notice given of such location to the Surveyor-General and the Register of the local district where the land lay, gave precision to the title and attached it to the land selected."

In *Schulenberg vs. Harriman*, 21 Wall. 44, there was in issue a grant made to the State of Wisconsin by act of Congress dated June 3, 1856.

Mr. Justice Field said on page 60:

> "1. That the act of Congress of June 3, 1856, passed a present interest in the lands designated there can be no doubt. The language used imparts a present grant and admits of no other meaning. The language of the first section is, '*that there be, and is hereby, granted* to the State of Wisconsin' the lands specified. The third section declares 'that the said lands *hereby granted* to said State shall be subject to *the disposal* of the Legislature thereof'; and the fourth section provides in what manner sales shall be made, and enacts that, if the road be not completed within ten years, 'no further sales shall be made, and the lands unsold shall *revert* to the United States.' The power of disposal and the provision for the lands reverting both imply what the first section in terms declares, that a grant is made—that is, that

> the title is transferred to the State. It is true that the route of the railroad, for the construction of which the grant was made, was yet to be designated, and until such designation the title did not attach to any specific tracts of land. The title passed to the sections, to be afterwards located; when the route was fixed their location became certain, and the title, which was previously imperfect, acquired precision and became attached to the land."

He then goes on to discuss the cases above cited, and says:

> "Numerous other decisions might be cited to the same purport. They establish the conclusion that, unless there are other clauses in a statute restraining the operation of words of present grant, these must be taken in their natural sense to impart an immediate transfre of title, although subsequent proceedings may be required to give precision to that title and attach it to specific tracts."

In *Leavenworth, etc., R. R. Co. vs. U. S.*, 92 U. S. 733, there was in issue a grant made by the United States to the State of Kansas by the act of Congress af March 3, 1863, to aid in the construction of two railroads. The act provided

> "that there be, and is hereby, granted to the State of Kansas for the purpose, etc., * * * every alternate section, designated by odd numbers, for ten sections in width, on each side of said road and each of its branches."

The Court said of this grant (p. 741):

> "It creates an immediate interest, and does not indicate a purpose to give in the future. 'There be and is hereby granted' are words of absolute donation and import a grant *in presenti*. This Court has held

> that they can have no other meaning. * * * They vest a present title in the State of Kansas, though a survey of the lands and a location of the road are necessary to give precision to it and attach it to any particular tract."

In *Missouri, etc., Ry. Co. vs. Kansas Pacific Ry. Co.*, 97 U. S. 491, there was in issue a grant made by the Congress by the act of July 1, 1862, to a railroad company of lands in aid of its construction. The Court said:

> "The act of July 1, 1862, passed to the company a present interest in the lands to be designated within the limits then specified. Its language is 'that there be and is hereby granted' to it the odd sections mentioned—words which import a grant *in presenti* and not *in future*, or the promise of a grant.
>
> "Similar terms in other acts of Congress granting lands have uniformly received this interpretation, unless accompanied with clauses restraining their operation. They were so interpreted in *Schulenberg vs. Harriman*, after full consideration of previous adjudications on their import; and the ruling there was followed in *Leavenworth, Lawrence & Galveston Railroad Co. vs. United States*, 92 U. S. 733. It is true that the route of the road, in this case as in those cases, to aid in the construction of which the act was passed, was to be afterwards designated; and until designated the title could not attach to any specific tracts. The grant was of sections to be afterwards located, and their location depended upon the route to be established; when that was settled, the location became certain, and the title that was previously imperfect acquired precision and attached to the lands.
>
> "It is always to be borne in mind, in construing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect

must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land; and that where no such power exists, instruments, with words of present grant, are operative, if at all, only as contracts to convey. But the rules of the common law must yield in this, as in all other cases, to the legislative will.

"As to the intent of Congress in the grant to the plaintiff there can be no reasonable doubt. It was to aid in the construction of the road by a gift of lands along its route, without reservation of rights, except such as were specifically mentioned, the location of the route being left within certain general limits to the action of the plaintiff. When the location was made and the sections granted ascertained, the title of the plaintiff took effect by relation as of the date of the act, except as to the reservations mentioned; the act having the same operation upon the sections as if they had been specifically described in it. It is true that the act of 1864 enlarged the grant of 1862; but this was done, not by words of a new and an additional grant, but by a change of words in the original act, substituting for those there used words of larger import. This mode was evidently adopted that the grant might be treated as if thus made originally; and, therefore, as against the United States, the title of the plaintiff to the enlarged quantity, with the exceptions stated, must be considered as taking effect equally with the title to the less quantity as of the date of the first act. *(United States vs. Burlington & Missouri Railroad Co.,* 4 Dill. 305.)"

In *Railroad Co. vs. Baldwin*, 103 U. S. 426, there was in issue a grant made by act of Congress of July 23, 1866, c. 212, to the State of Kansas for the use and benefit of a railroad company. The Court said:

> "The act is a present grant, except so far as its immediate operation is affected by the limitations mentioned. 'There is hereby granted' are the words used, and they import an immediate transfer of interest, so that when the route is definitely fixed the title attaches from the date of the act to the sections, except such as are taken from its operation by the clauses mentioned."

In *Wright vs. Roseberry*, 121 U. S. 488, there was in issue the act of Congress of September 28, 1850, granting swamp and overflowed lands to the State of Arkansas and other States. The statute provided:

> "SEC. 1. That, to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, *shall be, and the same are hereby, granted to said State.*
>
> "SEC. 2. That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the land described, as aforesaid, and transmit the same to the Governor of the State of Arkansas, and at the request of said Governor cause a patent to be issued to the State therefor; and on that patent the fee simple to the lands shall vest in the State of Arkansas, subject to the disposal of the Legislature thereof."

The Court discussed and quoted the above cases and adopted the doctrine thereof, and quoted and adopted the above-cited language from the *Leavenworth case*, 92 U. S. 733. Then the Court continued, as follows:

> "It is plain that the difficulty of identifying the swamp and overflowed lands could not defeat or impair the effect of the granting clause, by whomsoever such identification was required to be made. When identified, the title would become perfect as of the date of the act. The patent would be evidence of such identification and declaratory of the title conveyed. It would establish definitely the extent and boundaries of the swamp and overflowed lands in any township, and thus render it unnecessary to resort to oral evidence on that subject. It would settle what otherwise might always be a mooted point, whether the greater part of any legal subdivision was so wet and unfit for cultivation as to carry the whole subdivision into the list. The determination of the Secretary upon these matters, as shown by the patent, would be conclusive as against any collateral attacks, he being the officer to whose supervision and control the matter is especially confided. The patent would thus be an invaluable muniment of title and a source of quiet and peace to its possessor. But the right of the State under the first section would not be enlarged by the action of the Secretary, except as to land, not swamp or overflowed, contained in a legal subdivision, as mentioned in the fourth section; nor could it be defeated, in regard to the swamp and overflowed lands, by his refusal to have the required list made out, or the patent issued, notwithstanding the delays and embarrassments which might ensue."

The Court then demonstrated that the same doctrine had been laid down by the Supreme Courts of Arkansas,

California, Iowa, Missouri, Oregon and Illinois. We may add that the Supreme Court of Louisiana adopted the doctrine of *Wright vs. Roseberry* in *Betz et al. vs. I. C. R. R. Co.*, 52 An. 911, decided in February, 1900, and that one mouth previous to that decision it had held, in *Wooden vs. Fisher*, 52 An. 577, that a grant by the State of Louisiana to a Levee Board, couched in language identical with that in the Caddo Board grant, was a grant *in presenti*, saying:

> "From the date of the statute, for the purpose mentioned in it, the title became absolutely vested in the board. Though there were methods provided by its terms to complete the donation, the fact remains that the title was placed in the name of the Levee Board."

The principles above laid down by this Court were again confirmed by it in *U. S. vs. Montana Lumber Co.*, 196 U. S. 573; and in *U. S. vs. Loughrey*, 172 U. S. 210.

Let us apply these principles to the grants made by the State to the Caddo Levee Board.

Section 9 of Act No. 74 of 1892 (Louisiana Acts of 1892, p. 95) reads as follows:

> "SEC. 9. *Be it further enacted, etc.*, That, in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable the said board to assist in developing, establishing and completing the levee system in the said district, *all lands now belonging or that may hereafter belong to the State of Louisiana, and embraced within the limits of the levee district as herein constituted*, SHALL BE, AND THE SAME ARE HEREBY, GRANTED, GIVEN, BARGAINED, DONATED, CONVEYED AND DELIVERED unto the said Board of Commissioners of the Caddo Levee District, whether the said lands or

parts of lands were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been or may hereafter be forfeited, or bought in by or for, or sold to the State at tax sale for nonpayment of taxes; where the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by or sold to the State for nonpayment of taxes may at any time within six months next ensuing after the passage of this act redeem the said lands or all of them upon paying to the Treasurer of this State all taxes, costs and penalties due thereon, down to the date of the said redemption, but such redemption shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months it shall be the duty of the Auditor and Register of the State Land Office, on behalf o fand in the name of the State. to convey to the said Board of Levee Commissioners by proper instruments of conveyance *all lands hereby granted, or intended to be granted and conveyed,* to the said board whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners or by the president thereof, and thereafter the said president of the said board shall cause the said conveyances to be properly recorded in the Recorder's office of the respective parishes wherein the said lands are located; and, when the said conveyances are so recorded, the title to the said lands with the possession thereof shall from thencefcrth *vest*

> *absolutely* in the said Board of Commissioners, its successors or grantees. The said lands shall be exempted from taxes after being conveyed to, and while they remain in the possession or under the control of, the said board. *The said Board of Levee Commissioners shall have the power and authority to sell, mortgage and pledge or otherwise dispose of the said lands in such quantities, and at such times, and at such prices, as to the board may seem proper.* But all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Caddo Levee District, and shall be drawn only upon the warrants of the president of the said board, properly attested, as provided in this act."

The granting clause in this statute, *"shall be, and the same are hereby, granted, given, bargained, donated, conveyed and delivered,"* could not by any use of human words be made stronger.

The same language was used in Act No. 160 of the Acts of 1900 (original brief, page 8) by which Section 9 of the act of 1892 was amended. We have shown in the original brief that the amendatory act had for its object to leave out the supposed limitative words,

> "whether said lands, or parts of lands, were originally granted by the Congress of the United States to the State of Louisiana, or whether the said lands have been, or may hereafter be, forfeited, or bought in by or for, or sold to, the State for taxes."

From the title to this last act, it additionally appears that the grant was a grant *in presenti,* because, in compliance with the Constitution of Louisiana (Article 31) which declares that

> "every law enacted by the General assembly shall embrace but one object, and that shall be expressed in its title,"

this title declares its object to be,

> "To amend and re-enact Sections 1 and 9 of Act No. 74 of the session of 1892, approved July 6th, 1892, entitled An act to create the Caddo Levee District of Louisiana, etc., and more fully designating the territorial boundary of said district, *and what lands the State of Louisiana gives, grants and conveys to the Board of Commissioners of said district.*"

In the title to the original act the same purpose is manifest, because one of its clauses stating the object of the act is

> "donating to the levee district certain lands in the district belonging to the State."
> Acts of 1892, page 65.

Therefore, as said by this Court in *Schulenberg vs. Harriman, supra,* unless there are other clauses in this statute which restrain the operation of these words of present grant, these words of present grant must be taken in their natural sense to import an immediate transfer of title.

Are there any such restraining words in this statute? We submit that it is clear there are not.

Assuming that the clause stricken out by the amendatory act of 1900 was a limitative clause, and that the act did not cover lands owned by the State by virtue of her sovereignty, then there were two classes of lands given to the Levee Board by this act—first, lands granted to the State by the Congress of the United States; second, lands acquired by the State under tax proceedings. As to the second class, the act covered not only the lands theretofore for-

feited to the State, but those which might be thereafter forfeited to the State. As to those theretofore forfeited to the State, and as to which the one year for redemption allowed by law had expired, it was the desire of the State to give the original owners thereof the right for six months after the passage of the act to redeem the same, and to cover the contingency that the one year of redemption allowed by the State laws had not elapsed provision was made to avoid wronging the owners of these lands. Therefore, immediately after the granting clause above quoted the act says:

> "Where the State has, or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners after the period of redemption shall have expired."

As to all lands then forfeited to the State, or that might be thereafter forfeited to the State, the State had and could get nothing but a contingent title—*i. e.*, one liable to be divested by the owner of the lands within one year from the date of the forfeiture, and the clear object of this clause was to protect the rights of the former owners of such lands, and to prevent the State officers from executing to the Levee Board the deeds mentioned below, which deeds were declared to have the effect of vesting title *"absolutely."*

The act then proceeds with this proviso:

> *"Provided,* however, any and all former owners of lands which have been forfeited to, purchased by, or sold to the State for nonpayment of taxes may at any time within six months next ensuing after the passage of this act redeem the said lands, or all of them, upon paying to the Treasurer of the State all

taxes, costs and penalties due thereon, down to the date of said redemption, *but said redemption shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Caddo Levee District.*"

The meaning of this clause is manifest. The State owned these lands absolutely. The time of redemption had expired. The State by the granting clause of the act had thereby "granted, given, bargained, donated, conveyed and delivered" these lands to the Levee Board, but it desired, as a matter of public policy and grace to delinquent taxpayers, to permit them to redeem these lands during six months, and it desired this right of such delinquent taxpayers to be exercised before deeds were made to the grantee, as thereinafter provided, which deeds were intended to cut off all claims of the original taxpayers, because the making and recording of such deeds had the declared effect of vesting title *absolutely* in the grantee. The State desired, also, to preserve the vested right of the grantee to the lands as far as possible, and as was consistent with this act of grace to the taxpayers; and it therefore provided that each of these redemptions should be considered a sale by the State for the benefit of the grantee, and that the whole price of such sales should go to the grantee.

We submit that this clause is conclusive that the State regarded the granting clause as immediately vesting title in the grantee, and that the effect of this clause was to reserve in herself for six months the right to make, for the benefit of the grantee, sales of the lands granted, in order to carry out her merciful plan towards the original taxpayers.

In order to reserve to herself for these six months her right to sell the property granted for the benefit of the grantee, it was necessary to prevent the title to these tax lands from vesting *absolutely* in the grantee by the terms of the granting clause, and, therefore, the act proceeds:

> "After the expiration of the said six months it shall be the duty of the Auditor and Register of State Land Office, on behalf of and in the name of the State to convey to said Board of Levee Commissioners, by proper instruments of conveyances, all lands *hereby granted, or intended to be granted, and conveyed* to said board, whenever from time to time the said Auditor or Register of the State Land Office, or either of them, shall be requested to do so by the said Board of Levee Commissioners, or by the president thereof, and thereafter the said president of said board shall cause the said conveyances to be properly recorded in the Recorder's Office of the respective parishes wherein said lands are located, and when said conveyances are so recorded the title to said lands, with the possession thereof, shall from thenceforth **vest absolutely** in the said Board of Commissioners, its successors or grantees."

As the only object in delaying the giving of the deeds by the Auditor and Treasurer for six months was to enable taxpayers to exercise within that time the right of redemption conceded to them, this clause will fairly bear the interpretation that the deeds to be given and the *"absolute" vesting* of title referred only to tax-acquired lands, and that the true meaning of the clause "all lands hereby granted, or intended to be granted," referred only to tax-acquired lands, both those already acquired and those which might in the series of years thereafter be acquired by the State at tax sales. There was certainly no reason to delay the operation

of the grant for six months, or for any other preiod as to the lands granted to the State by the United States and those owned by the State within the limits of the district.

But, even if we regard this clause as referring to both classes of lands, it is not a clause whose words or whose meaning is contrary to the *present grant* contained in the first paragraph of the section. This clause does not say that there shall be no vesting of title until these deeds are made and recorded, but says that

> "the title to said lands, with the possession thereof, shall from thenceforth vest *absolutely* in said Board of Commissioners, its successors or assigns."

Even if the clause did not contain the word "*absolutely,*" and simply stated that "the title shall vest," such clause imports nothing more than what the Supreme Court of Louisiana said about an identical grant to a Levee Board in *Worden vs. Fisher,* 52 An. 911, "methods provided by its terms to complete the donation," and imports nothing more than what this Court has declared in the decisions above quoted, "subsequent proceedings to give precision to the title and attach it to specific tracts." With the word "absolutely" left out, this clause is almost identical in its provisions with the second section of the swamp land grant act dealt with in *Wright vs. Roseberry, supra,* which directed the Secretary of the Interior to make lists and plats of the lands described and transmit them to the Governor of the State of Arkansas,

> "and, at the request of said Governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to the lands shall vest in the State of Arkansas, subject to the disposal of the Legislature thereof."

This Court held that the clause just quoted did not mean that no title to the lands should vest in the Stat euntil the Governor should make a request for the patents, and the patents should have issued; and just so in this case, the Legislature did not say, nor intend to say, that no title should vest in the Levee Board until the Levee Board or its president should request the Auditor and Registrar to make deeds to the lands in question, and such deeds should be put of record in the respective parishes.

But why did the Legislature put the word "absolutely" in this sentence? That word cannot be ignored. It must have some meaning. It clearly means that, in addition to the investiture of title given by the granting clause, which investiture was contingent as to all tax lands, these deeds should operate as a further and complete investiture so as to cut off all claims of third persons to any equities in all these lands as between them and the State, and to shut the door against any demands being set by such third persons against the Levee Board so that such board would have clean and indisputable titles to sell and transfer to others.

III.

If the grant of 1892 as extended by the act of 1900 was a ***grant in presenti,*** *then the act of 1902, which repealed this grant, was in contravention of the contract clause of the Constitution of the United States, which prohibits any State from passing any law impairing the obligation of a contract.*

The State District Court found as a fact that these lands were swamp and overflowed lands granted by the United States to the State. The Supreme Court of Louisiana did not interfere with this finding of fact. It is immaterial in this case whether they were or not, because if

they were lake bottom lands which had become dry by subsidence of the waters of a navigable body of water, and, therefore, owned by the State in her sovereign capacity, then they were granted by the act of 1900.

If the grant was a present grant which invested the Levee Board with title, then that board had the unlimited right to sell what it had received title to. There was no question in this case as to the description or identity of the lands, or as to whether they lay within the district covered by the grant of all lands belonging to the State within the prescribed district. The Levee Board and its vendee had no difficulty in identifying these lands and describing them according to township, range, sections and quarter sections on the surveys of the United States. The State had no difficulty in locating and describing them for purposes of taxation, nor for the purpose of repealing its grant for the lands in the act of 1902.

If the title to these lands vested in the Levee Board by the grant itself, and nothing remained to make its title "*vest absolutely*" in the meaning of the statute but a request for a paper deed which the Auditor and Register had no power or discretion to refuse, then this formality was one which did not affect the title, and could be complied with as well before as after the sale by it of the property, and the Levee Board's obligation to comply with this formality was included in its obligation as vendor to such an extent that a court of equity would have compelled that board to make a request for such paper title, and possibly would have compelled the Auditor and Register to have executed such a paper title to the Levee Board. But, as shown above, the Levee Board and the vendors of defendant contracted that the Levee Board should perfect this title,

and that for this perfecting of title the Levee Board should receive the additional sum of $3,500.

The effect of the repealing act of 1902 was, therefore, to destroy not only the title already given by the Levee Board, not only the power of the Levee Board to demand and receive the paper title to the property which would enure to its vendee and vest the title in him *asbolutely*, but the power of the Levee Board to carry out its subsequent special contract to demand and receive from the Auditor and Register the paper title to the lands sold to its vendee.

IV.

Before this repealing act of 1902 was adopted, the Supreme Court of Louisiana had settled the interpretation of this grant as a grant ***in presenti,*** *and under that jurisprudence defendant's vendor contracted with the Levee Board in December 1901 (Rec., p. 87), to perfect this title. The repealing act of 1902 impaired the obligation of this contract.*

We have shown above that in the case of *Worden vs. Fisher*, 52 An. 911, decided in January, 1900, the Supreme Court of Louisiana decided that a Levee Board grant, couched in identically the same words and passed at the same session of the Legislature as the Caddo Levee Board act, was a grant *in presenti* and conveyed title to a Levee Board so that such title could be sold and be good, although no deed from the State officers had been requested, delivered and recorded.

Under the discussion of that jurisprudence the contract of December 18, 1901, to perfect the title to these lands was made.

The repealing act of 1902 had the effect of preventing the execution of that valid contract, and of repudiating the existing jurisprudence of the State.

As long as this valid contract to perfect title was in existence, and as long as the Levee Board had the power to carry it out, the State could not recover these lands under any pretext whatever, and from that point of view alone the repealing act of 1902 impaired the obligation of defendant's contract.

V.

This Court is not bound by the interpretation placed on the grant to the Caddo Levee Board by the Supreme Court of Louisiana in this case, because it will decide for itself what the contract was which it is claimed that legislation has impaired.

The contract set up in this case, under which the defendant holds title, is a legislative grant. That legislative grant has been specially repealed, and with that special repeal, must stand or fall defendant's title. The case turns, first, on whether the defendant had a contract under the legislative grant; second, on what the terms of that contract are; and third, on whether the special repealing act impairs the obligation of the contract. All three of these elements must be decided by this Court in the performance of its paramount authority to enforce the Constitution of the United States.

See *Douglas vs. Kentucky*, 168 U. S. 502, and the authorities there quoted; and *Powers vs. Detroit, etc., Ry.*, 201 U. S. 556.

It becomes therefore necessary for this Court to interpret the legislative grant in question, and to say whether it was a gr[illegible] *in presenti*, or a mere promise to give upon the condition that certain things should be done by the grantee and certain State officers, and that no title of any kind should vest in the grantee until these things should be done. If this Court comes to the conclusion that it was a grant *in presenti*, then that is the end of the case, because there is no dispute that defendant holds certain lands covered by the grant, or that the State did not by the act of 1902 specially repeal the grant under which defendant holds.

We have shown in our original brief that the alleged precedents followed by the Supreme Court as its reason for reversing the judgment of the lower Court in our favor are entitled neither to consideration nor even to respect.

We, therefore, ask that the judgment of the Supreme Court of Louisiana in this case be reversed, and the case remanded to that Court, with instructions to enter a judgment affirming the judgment of the First Judicial District Court for the Parish of Caddo.

Respectfully submitted,

EDGAR H. FARRAR,

JOHN D. WILKINSON,

Counsel for Plaintiff in Error.

CROSS LAKE SHOOTING AND FISHING CLUB *v.* STATE OF LOUISIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 46. Argued April 18, 1912.—Decided May 13, 1912.

The contract clause of the Federal Constitution is not directed against all impairment of contract obligations, but only against such as result from a subsequent exertion of the legislative power of the State.

The contract clause does not reach mere errors committed by a state court when passing upon the validity and effect of a contract under the laws existing when it was made; and, even if such errors operated to impair the contract obligation, there is no Federal question, in the absence of a subsequent law, on which to rest the decision of the state court.

Where the state court has decided that the plaintiff in error never acquired title because the grant was not one *in præsenti* but depended upon conditions subsequent which had never been fulfilled, and rests its judgment on that fact alone, and not on the effect of a subsequent statute which might have affected the title had the title of plaintiff in error been perfected, there is no Federal question.

Writ of error to review 123 Louisiana, 208, dismissed.

THE facts are stated in the opinion.

Mr. Edgar H. Farrar, with whom *Mr. John D. Wilkinson* was on the brief, for plaintiff in error.

Mr. W. P. Hall, with whom *Mr. Walter Guion*, Attorney General of the State of Louisiana, was on the brief, for defendant in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a suit by the State of Louisiana against the

Cross Lake Shooting and Fishing Club to recover about 11,000 acres of land, in the Parish of Caddo in that State, of which the fishing club was in possession, and to which it was asserting title, under a sale and deed made to its remote grantors by the Board of Commissioners of the Caddo Levee District. Although defeated in the district court, the State prevailed in the Supreme Court and there obtained a final judgment in its favor. 123 Louisiana, 208. The fishing club has brought the case here, claiming that the judgment gave effect to a state law which impinged upon the contract clause of the Constitution of the United States.

The facts are these: By Act No. 74 of 1892 the legislature of the State created the Caddo Levee District, defined its boundaries, vested the control and management of its affairs in a Board of Commissioners, clothed the Board with corporate powers, and made to it a grant of state lands in the following terms:

"SEC. 9. Be it further enacted, etc., That in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable the said Board to assist in developing, establishing and completing the levee system in the said District, all lands now belonging or that may hereafter belong to the State of Louisiana and embraced within the limits of the Levee District as herein constituted shall be and the same are hereby granted, given, bargained, donated, conveyed, and delivered unto the said Board of Commissioners of the Caddo Levee District, whether the said lands or parts of lands were originally granted by the Congress of the United States to the State of Louisiana or whether the said lands have been or may hereafter be forfeited, or bought in by or for, or sold to the State at tax sale for non-payment of taxes; where the State has or may hereafter become the owner of lands by or through tax sales, conveyances thereof shall only be made to the said Board of Levee Commissioners

after the period of redemption shall have expired; provided, however, any and all former owners of lands which have been forfeited to purchasers by or sold to the State for non-payment of taxes may at any time within six months next ensuing after the passage of this act redeem the said lands or all of them upon paying to the Treasurer of this State all taxes, costs and penalties due thereon, down to the date of the said redemption, but such redemption shall be deemed and be taken to be sales of lands by the State and all and every sum or sums of money so received, shall be placed to the credit of the Caddo Levee District. After the expiration of the said six months it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State to convey to the said board of Levee Commissioners by proper instruments of conveyance, all lands hereby granted or intended to be granted and conveyed to the said Board whenever from time to time the said Auditor or Register of the State Land Office or either of them shall be requested to do so by the said Board of Levee Commissioners or by the President thereof, and thereafter the said President of the said Board shall cause the said conveyances to be properly recorded in the Recorder's office of the respective parishes wherein the said lands are located and when the said conveyances are so recorded the title to the said lands with the possession thereof shall from thenceforth vest absolutely in the said Board of Commissioners, its successors or grantees. The said lands shall be exempted from taxes after being conveyed to, and while they remain in the possession or under the control of the said Board. The said Board of Levee Commissioners shall have the power and authority to sell, mortgage and pledge or otherwise dispose of the said lands in such quantities, and at such times, and at such prices as to the Board may seem proper. But all proceeds derived therefrom shall be deposited in the State Treasury

to the credit of the Caddo Levee District and shall be drawn only upon the warrants of the President of said Board, properly attested as provided in this act."

The lands in question were within the district so created and at the date of the act were owned by the State, but whether it had acquired them as swamp-lands under the legislation of Congress (Acts, March 2, 1849, 9 Stat. 352, c. 87; September 28, 1850, 9 Stat. 519, c. 84) or as the bed of what was a navigable lake when the State was admitted into the Union (see *Pollard* v. *Hagan*, 3 How. 212), is left uncertain. For present purposes, however, this uncertainty may be disregarded and the State's title treated as resting on the swamp-land grant by Congress, as was claimed by the fishing club in the state courts. No instrument conveying the lands to the Board of the Levee District was ever executed by the State Auditor or the Register of the State Land Office or recorded in the recorder's office of the parish. But in 1895 the Board sold and deeded the lands to the remote grantors of the fishing club for the agreed price of $1,100, or 10 cents per acre, which was deposited in a bank under an agreement whereby it would be payable to the Board whenever the latter should perfect the title by obtaining a conveyance from the Auditor and Register. Such a conveyance was not obtained, and in December, 1901, the grantees in the deed requested the Board to complete the title, and in that connection offered to pay $3,500 more for the lands; whereupon the Board adopted a resolution accepting the offer and authorizing its president to take proper steps to perfect the title. But it does not appear that the additional sum was either paid or tendered, or that anything was done under the resolution.

In July, 1902, the legislature of the State passed an act (Laws of 1902, No. 171, p. 324) authorizing the Register of the State Land Office to sell these lands at not less than $5 per acre, nor in greater quantities than 320 acres to

any one person, directing that the proceeds of such sales be placed to the credit of the Board of the Levee District, and containing the following repealing provision:

"Section 4. Be it further enacted, etc., That Act No. 74 of the Acts of the General Assembly of Louisiana for 1892 and Act No. 160 of the Acts of 1900 be and the same are hereby repealed in so far as they may in any way whatever affect any of the lands described herein, the same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them by any instrument of conveyance from the State as required by said act to complete the title to same."

This suit was brought in 1906. The petition made no mention of the act of 1902, but proceeded upon the theory, among others, that under § 9 of Act No. 74 of 1892, *supra*, the Board of the Levee District was wholly without authority to sell or otherwise dispose of the lands until a proper instrument conveying them to the Board had been executed by the Auditor and Register and duly recorded in the recorder's office of the parish, and that, as no such instrument had been executed or recorded, the sale and deed by the Board, under which the fishing club was asserting title, was unauthorized and void. The answer, which was also silent respecting the act of 1902, alleged, in substance, that the act of 1892 was a grant *in præsenti* of the lands and operated to transfer them to the Board of the Levee District without any conveyance from the Auditor and Register; that the fishing club's grantors purchased on the faith of that act; and that to permit the State to retake the lands would impair the obligation of its contract embraced in the act.

At the hearing in the district court counsel for the State placed some reliance upon the act of 1902, but the court ruled that the act of 1892 was a grant *in præsenti* of all lands falling within its terms other than those acquired through tax sales; that the provision requiring convey-

ances from the Auditor and Register related only to lands acquired through such sales; that, as the lands in suit had not been acquired in that way, the sale and deed by the Board to the fishing club's grantors were authorized and valid, even although there was no conveyance from the Auditor and Register; and that the rights acquired thereby were not divested or affected by the subsequent act of 1902. The record does not disclose that there was any reliance upon that act in the Supreme Court, and yet it was practically conceded in argument here that there was. But, whether relied upon or not, the act was mentioned in the statement preceding the court's opinion and was not otherwise noticed or treated as a factor in the decision. The court held that the act of 1892 was not a grant *in præsenti;* that a conveyance from the Auditor and Register was essential to invest the Board with any disposable title; and that, in the absence of such a conveyance, the sale and deed by the Board were wholly unauthorized and void. Upon that subject the court said (p. 214):

"In our opinion, the levee board acquired no title to the lands in dispute under the act of 1892, because no deed of conveyance thereto was ever executed by the Auditor and Register, or either of them, and, of course, no such deed was ever recorded. . . . This conclusion renders it unnecessary to consider the other issues presented by the pleadings, . . .; and it is wholly immaterial whether the board attempted to sell the land or to give it away, or whether it received an amount agreed to be paid or received nothing. Our reasons for the conclusion that the board acquired no title, and could therefore convey none, predicated on the admitted fact that no deed of conveyance of the lands in question has ever been executed by the auditor or register, are, briefly, as follows:"

Then, after proceeding with an analysis and interpreta-

tion of the provisions of § 9 of the act of 1892, it was further said (p. 217):

"Upon the whole, we are of opinion that the law in question is susceptible of but one interpretation, i. e., that its makers intended that disposable title to all lands granted or intended to be granted by it should vest in the grantee only upon registry, in the parishes where the lands lie, of proper instruments of conveyance executed by the Auditor and Register of the State Land Office. So far as the tax lands are concerned, the reason for thus qualifying the grant is obvious enough. . . . As to the swamp lands, it may well be that in many instances there were pending unsettled claims and controversies of which the land office was advised, with which the Register alone was qualified to deal, and which rendered it inadvisable that new titles should issue save to the knowledge of that officer. But whether these views as to the reasons which inspired the law, be correct or not, the law itself is plain, and it has (in effect) twice received from this court the interpretation which we are now placing on it; once in a case involving lands formerly constituting the bed of a shallow lake, and again in a case involving lands acquired by the state under its tax laws."

With this statement of the case we come to consider whether it presents any question under that clause of the Constitution which declares, "No State shall . . . pass any . . . law impairing the obligation of contracts." This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power of the State. It does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made. And so, while such errors may operate to impair the obligation of the contract, they do not give rise to a Federal question. But when the state court,

either expressly or by necessary implication, gives effect to a subsequent law of the State whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law. But if there be no such law, or if no effect be given to it by the state court, we cannot take jurisdiction, no matter how earnestly it may be insisted that that court erred in its conclusion respecting the validity or effect of the contract; and this is true even where it is asserted, as it is here, that the judgment is not in accord with prior decisions on the faith of which the rights in question were acquired. *Knox* v. *Exchange Bank*, 12 Wall. 379, 383; *Central Land Co.* v. *Laidley*, 159 U. S. 103, 111–112; *Bacon* v. *Texas*, 163 U. S. 207, 220–221; *Turner* v. *Wilkes Co.*, 173 U. S. 461; *National Mutual Building and Loan Ass'n* v. *Brahan*, 193 U. S. 635, 647; *Hubert* v. *New Orleans*, 215 U. S. 170, 175; *Fisher* v. *New Orleans*, 218 U. S. 438; *Interurban Railway Co.* v. *Olathe*, 222 U. S. 187.

It is most earnestly insisted that, even conceding that our jurisdiction is as restricted as just stated, it still includes the present case, because the decision of the state court, although not expressly rested upon the act of 1902, by necessary implication gave effect to it; and in support of this position it is said that but for that act the State could not have maintained the suit. But we do not understand that the State's right to maintain the suit was dependent upon that act, nor do we perceive any reason for believing that the act was an influential, though unmentioned, factor in the decision. Under the construction given to the act of 1892 the State still held the title, no conveyance having been made to the Board of the Levee District, and, of course, the right to maintain the suit was appurtenant to the title.

What has been said sufficiently demonstrates that no effect whatever was given to the act of 1902 and therefore that the case presents no question under the contract clause of the Constitution; and, as there is no suggestion of the presence of any other Federal question, the writ of error is

Dismissed.